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Voluntary Organisations
and Good Governance:
Formation, Resource Mobilisation
Management and Accounting

JANUARY, 1997

Editor: Sangeetha

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Editors Samgeothia

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Technical Report Series

This Technical Report Series is part of the Hivos-India Regional Office's effort to participate actively in the debate and dialogue in India on issues of human development and emancipatory interests. This series consists of monographs, working papers and Hivos conference proceedings. The publications reflect policy concerns of Hivos regarding development issues in India and address the problems faced by the marginalised in developing countries, such as in the areas of humane governance, environment, gender, the politics of development, technology choices and economic activities.

Series Editor: Shobha Raghuram

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Finally, we remain indebted to the participants of the two workshops (1992, 1994) on Accounting and Management Systems in the voluntary sector, organised by Hivos, for their active participation. It was their concerns and contributions which finally provided added value to the deliberations.

Sangeetha
Shobha Raghuram
Ben Witjes

PREFACE

This publication has its origins in a workshop on Management and Accounting organised by the Hivos Regional Office for its partners in Rajasthan, Gujarat, Maharashtra, New Delhi, and Orissa. The workshop was held at the campus of Social Work and Research Centre(SWRC) Tilonia (Rajasthan), late 1994. It was the second of such meetings organised by Hivos, the first being in 1992 for Hivos partners in south India. The workshop at SWRC-Tilonia highlighted issues pertaining to the legal frame within which voluntary organisations operate in India, the scope of various laws and acts, and of prudent internal governance. These issues have been of interest not only to the voluntary sector as a whole but also to the wider public. The papers in this booklet are meant to provide clarity on the stated subjects and at the same time promote discussion.

Hivos considers that good governance, accountability, sound organisational structures, and transparency are concerns that are common to voluntary institutions anywhere. These issues dovetail into the question of the long-term sustainability of voluntary initiatives. Accountability is partly imposed from the outside, i.e., by the various regulations issued by the Government of India, that make mandatory the regulation of foreign funding, by Indian and foreign donor institutions, and by the press. Internal discussions among NGOs (Non Governmental Organisations) in the last few years have already called for wide-ranging reforms of various Acts that pertain to the voluntary sector. At the same time there are voices that call for a reform of the voluntary sector from within. Voluntary organisations, it is maintained, have to become more responsive and more responsible to their communities, to their staff, their boards, and to the general public. Against this backdrop, internal and external audits go beyond fulfilling bureaucratic requirements. They assist an organisation to internally arrange, audit and set on record the management of financial resources on a systematic and timely basis. Equally important is that the entire exercise enables the organisation to provide transparency for itself in a wider setting and prove its accountability to its members.

Of late there has been extensive press coverage regarding financial mismanagement within the voluntary and NGO sector. While much of this is 'interest' driven, seeking to 'target' propoor ideologies and those who work for the poor, it has also created extensive interrogation within the NGO communities. Many have called for improved accountability and some have also urged donors to insist on a wider ethical practice. We consider these issues to be important, the ramifications being many, not just for development aid but for the NGO sector as a whole.

The earlier Hivos publication, "A Reference Manual on Management and Accounting Systems in the Voluntary Sector" ran into a second edition because of demand. The present publication, "Voluntary Organisations and Good Governance: Formation, Resource Mobilization, Management and Accounting", extended from the earlier one, it is hoped, will serve a similar need in the voluntary sector. We would like to express our appreciation for the Hivos partners who participated in the workshop. Their queries and observations have enriched the contents of this publication. The hospitality extended by SWRC-Tilonia and its staff were an important contribution to the success of the workshop.



Over the years, Hivos has played a supportive role for its partners in terms of skills-building and in trainings. It is hoped that this publication of the Technical Report Series will be of support to voluntary organisations in their efforts at sound management practices.

Ben Witjes Director Regional Office, Bangalore. November 14, 1996

VOLUNTARY ORGANISATIONS AND PAVING THE WAY TOWARDS ACCOUNTABLE STRUCTURES: AN INTRODUCTION

Sangeetha

An overview of the structure and contents of this publication is presented in this paper. The main thrust of each of the contributors is highlighted. It brings out the evolution and extent of the legal framework for assuring transparency and accountability in financial matters. The main features of two case studies-one dealing with the management of an expanding NGO* and the other with a field-friendly accounting system have been described.

The existence of voluntary organisations whether formal or informal can be traced back to a period before independent India when the British colonial rule was well established in the country. These organisations, probably started to provide relief to the people affected by natural disasters, later, took on various forms of a more permanent nature. One such form has been to provide education, medical care, clothing and other facilities free of cost for the poorer sections of the society. These can be clubbed under one umbrella called "charity". Another form, and more recent, has been the development-oriented type of organisations, the founders of which believe that charity alone cannot ameliorate poverty and in the long run only structural changes in society can bring about transformation in people's lives. Thus, the development approach towards self-reliance came into being. Even today one notices the continued existence of all these organisations be it of any nature, contributing their own little bit to lift people out of the poverty line. It will not be wrong if one were to say that in earlier years these organisations were not seen with a critical eye by the public. Rather, people talked of such founders as philanthropists and viewed them as saviours. Hence no questions of accountability were asked.

In the last two or three decades there has been a prolific growth of voluntary organisations in India. Despite the reasons for such a growth being many, one clearly can cull out the main causes for such a proliferation: the increase in the number of people below the poverty line, the increase in the flow of funds for this sector from various sources, and the increase in the numbers of unemployed in the country. The economic imbalances caused by the liberalisation policies have also aggravated the condition of the deprived. Paradoxically, the increase in social-sector spending in every financial budget appears to have only marginal impact on poverty levels, education, health care and sanitation systems and unemployment. Corruption has corroded the moral fibre in all spheres of life. Erosion of value-based systems is gradually increasing. Voluntary organisations are now categorised as a separate sector and placed alongside the private and public business sectors and the Government sector. They are being recognised not as a substitute but definitely as a helping hand to the government in its social sector programmes.

^{1*} The term NGO stands for "non-governmental organisation". Many political theorists prefer the term 'non-party political processes'. We use the term in a broad sense including all voluntary organisations.



With ample scope being provided for their functioning, the voluntary organisations perform a variety of tasks namely, charity-oriented activities, development-oriented programmes, government programmes, lobbying for changes in Government policy and so on. They have in the process become "visible" to the public. Large sums are channelised through these organisations. Funds are pouring in from international donor agencies and also from the World Bank and IMF. Many international donor agencies have set up their base in India to participate in, guide and monitor, closely the programmes of voluntary organisations which they fund. Programme evaluations, impact studies and financial evaluations are done on a periodic basis by the funders. Visits by government officials, donors and others interested in knowing about the work performed by voluntary organisations are on the increase. Aspects like social audit, accountability, transparency, democracy, impact study are being widely discussed at various national and international forums. There is a new awareness among the public regarding the performance of these organisations. Eyebrows are raised on aspects like accountability and transparency. Such being the situation voluntary organisations have become accountable to public at large, to the communities they serve, to donors who provide them with funds and lastly, to the government.

It will be interesting to see other aspects of the environment in which such voluntary organisations work. They tend to situate themselves in the rural pockets of the country as they work closely with the communities in the rural areas. The founder-members generally originate from the same area and concentrate their work in and around such villages. The founder-members normally hold important positions, and hence all activities are planned, determined and executed by these persons. In another variation there will be a core group consisting of close associates of the founder member who form the decision-making body, which designs and executes their programmes. Such close associates sometimes are also members of the same family. This is generally the phenomenon all over India regardless of whether these organisations are registered bodies or not. While the majority of voluntary organisations are established in this manner, the remaining organisations have a wider base in their organisational structure. They are registered bodies and follow all the rules laid down for such bodies. The board members of such bodies are distinct and separate from the executive members who execute the decisions made by the board. Such organisations have a clear division of roles and tend to have accountable structures. Board meetings are held at regular intervals, elections to the board are held regularly, and annual accounts are published etc.

With either type of organisation structure proper accounting is a necessity. While the registered organisation is required by the law to maintain proper accounts, for the unregistered organisation, maintenance of such an accounting system would help in enforcing self-discipline. Such self-discipline in the case of unregistered organisations and improved discipline in the case of registered organisations paves the way for accountability.

Voluntary organisations are by no means an exception to the legal requirements. They are governed by a set of laws if they choose to register themselves as legal entities. Registration implies complying with legal requirements which include maintenance of certain account books and records and audit of the same. Registration also means having an organisational structure with well-defined roles, with well-defined accountability within and outside the organisation. Many voluntary organisations, inspite of being registered are not following the legal regime

in true spirit. As a result questions relating to proper accounting and accountability are raised. If an association is not registered, then it does not have a legal entity and can neither sue nor be sued in the name of the association, the members remaining liable severally and jointly.

On the other hand, it may be argued that there is no compulsion to register. Even without registration an association of persons can function and will not be illegal although it may not derive the benefit of a separate entity and may not be deemed to have been conferred with the benefits arising out of registration. Non-registration of an association of persons as a body corporate does not absolve it from being assessed for income tax.

An associations established for the promotion of literature, science or the fine arts or for the diffusion of useful knowledge, the diffusion of political education or for charitable purposes may be registered under the Societies Registration Act 1860 and/or the Public Trusts Act (wherever it is enacted).

All associations of persons having a definite cultural, economic, educational, religious or social programme, (if they want to receive contributions from a foreign source), have to register under the Foreign Contribution (Regulation) Act, 1976. An unregistered association will not get government funds for carrying out its objectives even though it is charitable in nature.

The wordings of the various laws that apply to voluntary agencies are ambiguous and provide ample scope for misinterpretation. Demystifying such laws and ascertaining the real intention of the legislature is a prerequisite to proper functioning. Many NGOs as stated earlier are formed by people who are rural based but lack the knowledge of the laws that apply to associations with which people wish to associate themselves wish to. All these legislation's are couched in a language not easily understood by them. Hence, they tend to make unintentional mistakes costing them their registration often acquired with great effort.

It is clear however that NGOs do play a tremendous role in the process of transformation of society. This book attempts to provide NGOs and others interested in the development sector an easy access to information on four aspects in four sections as follows:

- 1. Choosing an organisational structure.
- 2. Obtaining resources
- 3. Management.
- 4. Accounts, Audit and Tax Management.

The first paper in the first section, by M. K. Narasimha Rao, deals with the general provisions of the Societies Registration Act 1860. Various states have enacted their own acts with minor changes in certain sections. The general provisions of the Societies Registration Act 1860 deal with procedures relating to incorporation, filing of returns, secretarial matters, dissolution, withdrawal of registration, provision for appeals etc. The author has discussed the provisions in as simple a language as possible to enable even a layman to understand them. For the same reasons, he has refrained from providing discussion notes and case laws on the subject.



The second paper in this section by Latika Salgaonkar on The Public Trusts Act vis-a vis The Societies Registration Act, briefly describes a few important provisions of The Public Trusts Act and thereafter makes a comparison between the two Acts. The paper briefly brings out the point that powers vested in the Registrar of Societies are very meagre vis-à-vis the powers vested in the Charity Commissioner/Registrar of Public Trusts.

The Societies Registration Act, 1860 is applicable to all the states except those states which have their own Societies Registration Act. The Public Trusts Act is enacted only in four states namely, Maharashtra, Gujarat, Rajasthan and Madhya Pradesh. In the states of Gujarat, Rajasthan, Maharashtra and Madhya Pradesh all charitable organisations come under both these Acts.

The author ends by making a clear distinction between charitable and developmental activities. She expresses her anguish over the difference in emphasis and degree of control exercised on organisations of a similar nature operating in different states only because they are incorporated in a different state. She therefore stresses the need for a central legislation for voluntary organisations that are engaged in development activities vis-a-vis Societies/Trusts whose legal framework is most suited for religious/educational/other activities.

The second section 'Obtaining Resources', deals with two papers, one on Foreign Contribution (Regulation) Act, 1976 and the other on Foreign Exchange Regulation Act of 1973.

On the subject of contributions in cash and kind from sources abroad there is some stringent legislation. The paper on The Foreign Contribution (Regulation) Act, 1976 by K. Shivakumar explains the procedures governing registration with and reporting requirements of the Home Ministry. The paper advises readers registered under this Act on certain do's and don'ts. A case study is also given to illustrate what is legal and illegal under the Act. The author has interpreted certain sections under the Act. These interpretations constitute one school of thought. They are based on the personal experiences of the author in interactions with the Home Ministry etc. The author has chosen to take a conservative approach in the absence of a clear clarification from the Home Ministry on the intention of the legislature. e.g. the author lays emphasis on the opening of only one bank account for receipt and utilisation of foreign funds; hence an organisation that desires to open more bank accounts to facilitate easy operations will have to get a separate clearance from the Home Ministry. The reader, however, can choose to take a different approach and conform with the other school of thought which says that though only one bank account should be opened in order to receive funds, such funds can be further transferred and utilised through different bank accounts when necessary. The approach of the second school of thought is nevertheless risky and hence such an organisation, according to the author, should be prepared to face the risk of losing its registration under the Act.

The Foreign Exchange Regulation Act, 1973 shortly called the "FERA" has been enacted in order to regulate the inflow into and outflow of money from the country. The paper presented by M.K. Narasimha Rao briefly explains the provisions of the Act that apply to persons working in the voluntary sector, under certain specific circumstances. People working in the voluntary sector sometimes need to go abroad which necessitates carrying some foreign currency with them. Similarly foreign nationals working in the voluntary sector who visit India may carry foreign currency with them. This paper describes the law that relates to various transactions

that take place in such instances. It needs to be made clear that the law in force in January 1996 is discussed in this paper.

Having covered most of the Acts that apply to voluntary agencies in the first two sections of this book, it was felt that in the third section of the book, 'Management', attention should be bestowed on the management aspects. Though everyone uses the word "management", the meaning conveyed may not be the same; what constitutes good management practice may also not be clear to everyone.

All organisations need management whether they are government departments or agencies, military systems, educational and cultural bodies, hospitals, resource development projects, reform institutions, religious organisations or business enterprises. Management is needed regardless of whether the economy is capitalistic or socialistic, whether society is totalitarian or libertarian and whether the polity is progressive or conservative. However since organisations differ greatly in their nature, goals, roles, activities and environment, it is inevitable that the managerial functions, processes and approaches differ from organisation to organisation. There are large and small organisations, fast-growing and slow-moving organisations, young and old organisations, public and private organisations, complex and simple organisations, high technology and low technology organisations.

No doubt organisations have several similarities but they also have vital differences. They present different problems, opportunities and challenges to management. The degree of complexity, ambiguity, uncertainty and volatility of the environment differs from one organisation to another. It is then but natural that the processes and approaches of management are to be tailored to the realities and dynamics of each type of organisation.

It is in the above context that two papers on Management are introduced in this book. Both papers concentrate on the management aspects of voluntary organisations. The first paper by Ajit Mani and Vivek Warrier outlines the problems faced by development organisations in coping with the changing environment. They talk about why there is a resistance to change in development organisations. This is effectively represented in a case study called "The South India Project". This case study is based on the professional experience of the authors over a period of six years in an organisation working for development. The case study is a typical example of how a small organisation with good credibility did not make changes on the administration, accounting and management fronts when faced with an exponential growth in funding by international donor agencies. This resulted in bad financial management, bad accounting and inadequate reporting to donor agencies. A system study revealed the lack of standardised procedures in accounting. The paper concludes by narrating how a new system was introduced which enabled the organisation to access accurate information at the required time.

In the second paper on management, M. Anand Kumar compares voluntary agencies with profit bodies. The comparison is done to draw the attention of the readers to one of the reasons for profit-making bodies being successful enterprises, namely, that they have adopted sound

management practices. According to him these practices which have evolved over a period of years could be examined and adapted/adopted by voluntary agencies with the ultimate object of better and more profitable management-ensuring sustenance. The author is of the view that voluntary organisations also have a concept of profit and a specific source which appropriates it; which he clearly explains under the heading "concept of profit". The paper also deals with financial management in depth as the author feels that the areas of accounting and financial management are generally neglected by voluntary agencies. The author ends by advocating a gradual withdrawal from grants to owning means in order to ensure self-sustenance.

The section on 'Accounts, Audit and Tax Management' has, in all, six papers: three on accounting, one on audit and two on tax management. The first paper, by T. Ramesh, on "Responsible Accounting with reference to voluntary organisations" explains various aspects of a responsible accounting system. The author also comments that accounts by voluntary agencies are often not given the importance they deserve. According to him, voluntary agencies are responsible to funders, beneficiaries, employees, general public and the government and hence necessarily have to follow certain standard accounting principles. The author remarks that donors funding voluntary agencies also have to provide necessary funds for introducing standard accounting practices such as internal controls (which probably results in recruitment of additional staff) without which it would be difficult for such organisations to adopt such standard practices.

The paper, on Inti Deepam Accounting Structure is a case study on Thrift and Credit Accounting System introduced in an organisation called "Inti-Deepam". This accounting system was consciously developed in an environment where qualified and experienced accounting staff were not available, where people involved in thrift and credit programmes were more comfortable with their own language i.e., Telugu when compared to English. As a result, the accounting system enabled field level workers to maintain accounts without difficulty. This case study written by M. Anand Kumar could probably be studied by readers and adopted or adapted to suit the circumstances in which they work.

The paper on statutory requirements of accounting by K. Shivakumar briefly describes the accounting and reporting requirements under each statute as far as voluntary organisations are concerned. The statutes covered are the Foreign Contribution (Regulation) Act, 1976, the Societies Registration Act, 1860 and the Income-Tax Act. It is clear from the paper that any violation of the requirements under each statute would attract penalty. The paper enables the readers to get easy access to the legal requirements on accounting and reporting so that they do not have to grope in the dark.

Audit generally is viewed by organisations as a necessary evil and the auditor is viewed as an enemy! Many times, organisations feel threatened by the presence of an audit team. This sometimes results in non-co-operation with the audit team. All these ultimately may lead to both parties not performing their roles. The paper deals with the roles of audit and also elaborates on the types of audits and the roles of statutory and internal auditors. The paper is introduced to enable the user to understand the significance of audit including internal and external audits. The author, M. K. Narasimha Rao concludes with the hope that the auditor will be looked upon more as a disciplining friend.

The paper on provisions of the Income-Tax Act with respect to voluntary organisations by M. Anand Kumar elaborately explains all the provisions of the Act and the consequences of violations under the Act. The language is made as simple as possible to enable the reader to understand all the relevant sections under the Act.

The paper on Tax Management of Charitable/Religious Trusts and Institutions written by Anil Charnalia elaborates some of the provisions of Income-Tax Act with respect to voluntary organisations. This paper reiterates some provisions that are already mentioned in the previous paper written by M. Anand Kumar. Further in this paper some crucial case laws have been effectively presented for better tax management of such institutions.

The authors of these twelve papers in this publication have attempted to lend a helping hand in solving some of the problems faced in the day-to-day functioning of a voluntary agency. All writers have based their papers on practical experience and have attempted to give practical solutions wherever possible within the legal framework. The solutions given may be generalised or may apply only in certain circumstances. By and large, in order to make the papers as accessible as possible, the authors have not attempted to delve into case laws or judgements passed under specific circumstances by courts.

The law and its interpretation in applying the rules framed under the law in their true spirit, implications of violations of the rules are all explained as succinctly as possible. This publication is meant as a reference manual and as a guide for new organisations and for existing organisations, This publication, however, has not attempted to solve all the problems that a voluntary agency may face in its day-to-day functioning. We hope that the readers and, more important, those working closely with voluntary agencies will find this publication useful. It is hoped that this publication will act as a guide to readers by providing technical inputs to the practical problems faced by NGOs and play the role of a guide to newly formed organisations, thereby ensuring their smooth functioning.



SECTION I

CHOOSING AN ORGANISATIONAL STRUCTURE



THE SOCIETIES REGISTRATION ACT, 1860

M. K. Narasimha Rao

To accord the status of a legal persona to a Society, the formality of registration of the Society has to be gone through. The earliest statute governing such registration is more than a century old. In turn, it has spawned similar statutes at the state level. Essentially, these Acts stipulate the requirements for the formation of a society, its objective clauses, rules and regulations for the conduct and management of its affairs, accounting and audit, legal liabilities, dissolution etc. Within the overall framework, one can find subtle variations in details from state to state. Some of these finer points are touched upon and in the concluding section further points of interest have been indicated.

Preamble

In order to provide/improve the legal status of organisations/bodies established for the promotion of fine arts, literature, science, charitable purposes, diffusion/dissemination of useful knowledge etc., the Societies Registration Act 1860 was enacted. It became effective from 21st May, 1860. In addition to this parent Act, the States have enacted various acts and rules have been framed thereunder for the proper working and supervision of societies registered under the State Act.

Formation of a society

A society can be formed for the purposes envisaged in the Societies Registration Act 1860 or under the relevant State Act for purposes enumerated above and/or detailed in the concerned State Act provided the following conditions are fulfilled:

- i. A minimum of seven members must subscribe to the Memorandum of Association. Their names, addresses and occupation must be mentioned in the Memorandum.
- ii. The object of forming the society should be the promotion of literary, scientific, charitable, cultural purposes in general or those specifically provided in the Central/State Acts.
- iii. The Memorandum of Association should satisfy the minimum requirements under Sec.2 of the Act (see below)

Memorandum of Association

The minimum requirements of a Memorandum of Association are:

- i. Name of the Society.
- ii. Objects of the Society.
- iii. Names, addresses and occupation of the persons of the Governing Body (by whatever name it is called) to whom, by the rules of the Society, the management of the affairs of the Society is entrusted.
- iv. Place and address of the registered office.
- v. Provision for amendment of the articles of the Memorandum of Association.



Registration

A Society can be registered with the prescribed authority (prescribed under the State Acts) by making an application together with:

i. A copy of the Memorandum of Association subscribed (i.e. signed) by a minimum of seven persons

ii. Registration fee as prescribed by the State Act.

iii Rules and Regulations of the Society certified by not less than three members of the governing body.

iv. Witnessed by a person with details of name, occupation and address.

Rules and Regulation

The rules and regulations may provide, inter-alia:

- i. The office bearers, their duties and responsibilities.
- ii. The duties and responsibilities of the members of the governing body.
- iii. Quorum for the general meetings and governing body meetings.
- iv. Procedure for convening general meetings, extraordinary general meetings and governing body meetings and sub-committee meetings thereof.
- v. Procedure for postponing meetings in the absence of quorum.
- vi. Procedure for approval by circular resolution.
- vii. Staff matters including appointment, discipline and termination.
- viii. Staff Rules & Regulations, including grievance procedures, where necessary.
- ix. Audit of accounts and appointment of Auditors.
- x. Procedure for maintenance of proceedings of meetings and person responsible therefor.
- xi. Maintenance of books, records, etc., and person(s) responsible therefor.
- xii. Operation of bank account(s) and authorized signatories.
- xiii Investments, borrowings, acquisition and disposal of assets.
- xiv. Procedure for amending rules and regulations.
- xv. Admission, qualification & removal of members and membership fees.

Prohibition of Societies with undesirable names

A Society is free to change its name after a resolution is passed by the General Body of the Society and if an application is made to the Registrar who may sanction/reject it. It may be noted that similarity of names is prohibited under the Societies Registration Act. There is a general restriction to use certain specific names e.g. an organisation cannot get a registration if it wants to use, for example, Ashoka Pillar as its name. All organisations are covered under the Names and Emblems Act. A large number of state acts prohibit societies with objectionable names.

Annual list on the details of the Managing Body

All Societies must file within a specified date (number of days varies from state to state) a

list of names, addresses and occupation of the members of the governing body then (on the date of filing) entrusted with the affairs of the Society.

Convening of Annual General Body Meeting after Registration

A majority of State Acts require that within a certain prescribed period from the end of the financial year, (period varies from state to state) an annual general body meeting be convened.

Balance Sheet and Auditor's Report

All Societies must file an audited balance sheet and income and expenditure accounts together with auditor's report(s) must be filed along with list of members within the prescribed time period (varies from state to state) with the authorities.

Failure to file Returns

Failure to file proper returns within the prescribed time entails punishment in the form of fines (amount varies from state to state).

Property of the Society

All properties of the Society shall vest in the trustees or governing body of the Society for the time being in place.

Suits

All suits will lie in the name of the President, Secretary or Chairman or Trustees as determined by the rules of the Society or in the name of the person so appointed by the governing body.

Provision to alter, extend or abridge Object Clauses

Societies can alter, extend or abridge their objective clause(s) provided:

- i. The same is approved by the governing body.
- ii. A notice of intended changes is given to all members.
- iii. A general meeting is convened for consideration of the intended changes.
- iv. It is approved by not less than three-fifths of the members present and voting and confirmed by three-fifths of the members present and voting at a second special meeting convened one month after the first meeting.

Dissolution of Societies and adjustments of their affairs

A resolution approved by not less than three-fifths of the members present and voting at a general meeting convened for the purpose is needed to dissolve the Society and thereafter, all



such steps required to give effect to the dissolution including settlement of claims and liabilities and realization of assets can be started. Any profit remaining therefrom shall not be distributed as profits/ dividends to members but can be given to another Society as expressly approved by three-fifths of members present and voting. However, if the Government is a member or contributor or otherwise interested in any Society, such Society shall not be dissolved without the specific consent of the Government.

Supersession, Suspension and Withdrawal of Registration

Societies can be superseded by appointing Administrator(s) and even the registration can be withdrawn. Before any such action is taken, the Registrar has to:

- i. Give due notice to the Society.
- ii. Appoint an Enquiry/Inspecting officer.
- iii. Obtain his report, and after examination of the report of the Enquiry/Inspecting officer, satisfy himself/herself that there is a cause for such action.
- iv. Give an opportunity to the Society to explain its stand/case.

Only then he/she can proceed with the intended course of action.

Appeals

Provision for appeal exists against:

- i. Refusal to register a Society.
- ii. Refusal to register amendments to Rules.
- iii. Refusal to register changes in the objects clause.
- iv. Proposal to suspend, supersede and withdraw registration.

All appeals lie with the appropriate Appellate Authority.

Remuneration/Honorarium to Members/Governing Body/Trustees/Office Bearers

Only Tamil Nadu Societies Registration Act prohibits payment of honorarium to President/Chairman or office bearers of a Society. In other states there is no specific prohibition. However expenses incurred in connection with the business of the Society can be reimbursed.

In Conclusion: Further points of Interest

The registration of a society can be rejected/refused on the following grounds; If the objects clause of the Memorandum of Association violates some of the fundamental rights of a citizen then the Registrar can refuse the registration of such an organisation. In Karnataka State, e.g., the Registrar insists that there shall be a membership fee clause without which the registration will not be granted. Barring the Tamil Nadu Societies Registration Act which prohibits payment of honorarium to President/Chairman or office bearers of a Society, the Acts of all other States do not prohibit such payments explicitly. Hence sitting fees may be paid to members of the

governing body by Societies in these States. The rules under the Societies Registration Act do not mention the working hours in framing its rules and regulations, whereas Societies registered under the Shops and Establishment Act have to comply with such requirements. Payment of Bonus Act is not applicable for non-profit organisations. The Provident Fund Act is applicable as the contrary is not held. The Employees' State Insurance Act is not applicable until notified. The personal assets of the trustee(s) of the Society can be attached for any claim arising out of proven individual negligence of the trustee. A Society may employ personnel on a temporary basis or on a contractual basis renewable after a certain period or on permanent basis. Courts may take a stand that continuous contractual employment means permanent employment. Legally the staff employed under the Societies Registration Act are not covered by the Industrial Disputes Act. Courts, however, may in specific instances, refer to the Industrial Disputes Act when the solution does not lie within the Societies Registration Act. In the event of dissolution of a Society the assets can be transferred to a similar organisation i.e., another Society/Public Charitable Trust, having similar objectives. Unregistered bodies/ group of persons can apply for registration under the Foreign Contribution (Regulation) Act 1976. However, there have been no known cases of such approval in the recent past.



THE PUBLIC TRUSTS ACT VIS-A-VIS THE SOCIETIES REGISTRATION ACT, 1860

(With special reference to Non-Governmental Organisations)

Latika Salgoankar

Voluntary organisations may be formed as legal entities by registering as a society or as a public trust. However in Maharashtra, Gujarat, Rajasthan and Madhya Pradesh states, they are required to be registered under both these Acts. Each State has its own Societies Act and Rules. Therefore there are some differences in the contents of this Act; yet, it is the simpler of the two Acts. The Public Trusts Act is a more elaborate Act; its provisions not only give very wide powers to the appropriate authority (Charity Commissioner/Registrar) in enforcing the provisions of the Act but they also give powers to initiate action on an application to any person having an interest in the affairs of the Trust. This renders the voluntary agencies in those four states vulnerable to litigation by a larger group of persons. Some important features of the Public Trusts Act include the Instrument of Trust, the document witnessing the creation of the Trust and its objectives; the definition of charitable purposes; identification of the person having an interest; procedures for registration; maintenance and audit of accounts; duties of Trustees; powers of the appropriate state authority (Charity Commissioner) and other officers. A comparison of the powers of the Charity Commissioner and the Registrar of Societies would reveal the sweeping powers of the former and the degree of care that needs to be exercised by the voluntary agencies in conducting their operations.

Introduction.

In recent years, NGOs have assumed a prominent place in the developmental process of the country. Right from grassroots levels in villages to big metropolitan cities, the NGOs are working on various issues and doing meaningful and constructive jobs.

In some states (Maharashtra, Gujarat, Rajasthan and Madhya Pradesh) NGOs are treated as public trusts and have to be compulsorily registered under both the respective State Public Trusts Act and the Societies Registration Act. However, the Societies Registration Act also covers any other society formed for a purpose other than a charitable purpose like development, public issues, etc. As opposed to Societies Registration Act, Public Trust Act also covers trusts like religious trusts. However the objectives of the NGOs differ from the above mentioned types of trusts or societies. Hence one law cannot comprehensively cover both types of organisations.

All NGOs whose objectives are development-oriented need to be segregated from the other trusts that are generally formed for religious purposes. Since a very large number of NGOs are registered under the Societies Registration Act and relatively, a smaller number are registered under The Public Trusts Act (perhaps due to the Act being in force in only four states), the comparison is limited to these four states only. Moreover, due to changing trends



such as public accountability, transparency, large funds deployed and limited managerial capabilities available with NGOs, etc., people working with NGOs should make themselves well-conversant with legislations so that the cause is well served.

The Societies Registration Act 1860 is a central legislation and a large number of states have enacted their own Acts and Rules. Only Maharashtra, Gujarat, Rajasthan and Madhya Pradesh have enacted their own Public Trust Acts and Rules in addition to Societies Registration Act. In Maharashtra the Act is called the Bombay Public Trusts Act.

The Societies Registration Act, is a comparatively simpler and less rigorous Act and the provisions mostly relate to procedural or technical aspects of forming a society and formalities to be followed thereafter and adequate emphasis on accountability is not laid in all the State acts.

The Public Trust Acts on the other hand are more exhaustive and have elaborate provisions covering various operations of Public Trusts. The Charity Commissioner (or his/her equivalent in other Trust Acts) has very wide powers to supervise, control and monitor the working of any public trust. Unlike a Society registered under Societies Registration Act, apart from the authorities (statutory officers), "any person having interest" in the affairs of the Trust can on an application initiate action under the Public Trust Act. Hence NGOs who are registered under the Public Trust Act should exercise due care and rigidly comply with the various provisions of the Public Trust Act. Though nothing may emerge ultimately out of this litigation (if filed by anybody) it may still have its nuisance value, unnecessarily putting the concerned NGO into lot of complications or red light. Perhaps the need to have NGOs registered under the Public Trust Act in addition to registration under the applicable state Societies Registration Act may be re-examined.

A broad comparison of the Public Trust Act in the states

Of Rajasthan, Maharashtra, Gujarat and Madhya Pradesh:

Applicability:

Applies to all trusts including religious trusts irrespective of their income and societies (charitable purpose and/or otherwise) formed under the Societies Registration Act.

Authority

In Maharashtra & Gujarat, the Charity Commissioner is the supreme authority who is assisted by Deputy and Asst. Charity Commissioners and other officers, whereas in Madhya Pradesh the Collector of the District is the Registrar and in Rajasthan the Devasthan Commissioner is the Registrar of all Public Trusts. However there are Deputy Commissioners and Assistant Commissioners and Advisory Boards to implement the various provisions of the Act. Applies to trusts whose gross annual income from all sources is not less than Rs.3,000/-, or the total valuation of assets is not less than Rs.30,000/-. In Maharashtra & Gujarat, the Public Trust Act applies to Muslim Wakfs also, whereas in Rajasthan it does not.

Important sections of Public Trusts Act

Instrument of Trust

This includes trust deed created by the author of the trust; and Memorandum of Association and Rules & Regulations in case of a Society formed under the Societies Registration Act. This assumes a very great importance because the objects of the Trust are mentioned in this document and if there is any alleged deviation from these objects, the authorities can initiate action against the Trust.

Person having interest

This is not specifically defined in the Madhya Pradesh Act, but quite clearly defined in the Bombay Public Trust Act and the Rajasthan Public Trust Act and includes a wide category of persons.

Charitable Purposes

It is defined in general/broad terms in the Rajasthan and the Madhya Pradesh Public Trust Act, but it is covered by a very exhaustive definition in the Bombay Public Trust Act.

Registration: Application etc.

In all the states applications for Registration have to be submitted within 3 months of the creation of the Trust. Registration becomes very important because it sanctions the legal existence. Such a registration enforces the organisation to public accountability, transparency, self-sustainability, funding by donors (within and outside the country) etc. An unregistered trust does not have a legal existence. On receipt of the application for registration the concerned officers make inquiries and in making these inquiries the officers have wide powers as are vested in the courts. A public notice has to be given in the States of Maharashtra and Rajasthan

Maintenance of Accounts

The trustees have a duty to keep and render accounts to the authorities, and may be in some cases, to the beneficiaries. A beneficiary or a person having interest or the authorities under the Act can demand the accounts.

The accounts of the Trust should be audited by a Chartered Accountant and a report submitted thereon in a form prescribed by the Act. Audited accounts and returns prescribed under the Act should be filed within the stipulated time failing which penalties are levied, which are more stringent in Maharashtra & Gujarat as compared to other states. Charity Officers may also order a special audit either suo moto or on a petition by an interested person. Maharashtra and the Gujarat Acts require the auditors to specially report on irregularities. Since NGOs handle large amounts of funds both local and foreign, audit and accountability play an important role.



Powers, duties and restrictions on the Trustees

These are very elaborately defined in the Bombay Public Trust Act.

Control of Charity Officers

In all the states, the Authorities (Charity Officers) have vast powers under the Act which includes right to enter and inspect the property/books including seizure (when warranted) of the same after following the rules prescribed. This power includes the power to break open a lock or use reasonable force though the officers are supposed to give reasonable notice.

Gross negligence/breach of trust/misconduct by the trustees

This is only mentioned in the Bombay Public Trust Act. The Charity Commissioner is empowered to take decisions.

Powers of the Charity Commissioner

The powers of the Commissioner are very elaborately mentioned in the Bombay Public Trust Act, whereas in the Acts of the other states they are not so exhaustive.

- a) The Charity Commissioner can give directions for proper administration of the affairs of the trust. This direction cannot be challenged.
- b) The Charity Commissioner may institute inquiries either "suo moto" or on receipt of a complaint in writing from "any person having interest" in the Trust.
- c) The Charity Commissioner may either on application of a trustee or any person interested in the Trust or on receipt of report of an inquiry, suspend, remove or dismiss any trustee.
- d) In holding inquiries under the Act, the officer holding the same shall have the same powers as are vested in the courts.
- e) All inquiries under the Act are deemed to be judicial inquiries.
- f) No civil court has jurisdiction to decide or deal with any question which is to be decided by any officer or authority under this Act.

The above sections clearly bar the intervention of any other legal authority in the matters concerning Trusts (Except appeals or writs)

The Societies Registration Act is a Central Act. Where states have enacted their own State Societies Registration Act, the general frame work of the Central Act is maintained. But each state has incorporated in its Acts and Rules framed thereunder, its own set of rules for administration and monitoring of the societies registered in their respective states.

Comparison between Societies Registration Act and Public Trusts Acts

The process of registration of a society is simpler as compared to a public trust. The Registrar of Societies does not have as wide powers as Charity Commissioners or the appropriate authority (like the power to enter into the premises of a society and/or inspect the premises/books/records on his own etc.). "Any person having interest" is entitled under the Public Trust Act to file a litigation against the Trust unlike the Societies Registration Act. The Charity Commissioners in some states have powers to give directions, to suspend, remove any trustee whereas the Registrar has no such powers.

The Charity Commissioner is deemed to be a civil court and has powers accordingly, unlike the Registrar of Societies. Since similar organisations are governed by different acts with different emphasis and degree of control/supervision/monitoring and subject to different penalties depending on the state in which the organisation is registered, there seems to be a need for a comprehensive, common and single act/legislation applicable to all NGOs who are engaged in developmental activities as compared to Societies/Trusts who are mostly engaged in religious/educational/other activities. This would go a long way in streamlining the requirements, powers and penalties.

NGOs engaged in developmental work are subjected to similar treatment (monitoring, control, supervision, accountability etc.) in all places. It is, therefore, most essential that a central legislation be specifically framed to deal with such voluntary agencies.



SECTION II

OBTAINING RESOURCES



THE FOREIGN CONTRIBUTION (REGULATION) ACT, 1976

K. Shiyakumar

Voluntary agencies having specific objectives are permitted to receive assistance in the form of foreign currency, foreign securities like shares etc., or other assets, provided they obtain the prior permission of the Government of India for receiving such assistance. Certain procedures are required to be followed in getting the clearance of the Government. At the end of every financial year, it is compulsory to file a Return in the prescribed format with the Government. The Government has wide ranging powers of inspection in those cases where such assistance is suspected to be misused; if found guilty punishments are imposed. The Act lists the sources from whom foreign contributions may be received and receipts that fall outside the perview of this Act. A few points noticed in the operation of the Act as well as a few suggestions for improvements have been included.

Background

The Foreign Contribution (Regulation) Act, 1976 (FCRA)* is enacted to regulate the acceptance and utilization of foreign currency and foreign hospitality by certain persons or associations, with a view to ensuring that parliamentary institutions, political associations, academic and other voluntary organisations as well as individuals working in important areas of national life may function in a manner consistent with the values of a sovereign democratic republic.

The first decade after independence witnessed very few agencies that were receiving foreign money. However, during the years 1970-1972, certain trends were noticed by persons at the helm of affairs in government circles. There was a rumour that there was a certain inflow of foreign money which was utilized in the Indian sub-continent for activities which were undesirable. As a result, the Government had prepared a bill as early as in 1973 to control or monitor the use of foreign funds received. However, when the bill was finally introduced, three years had lapsed and ultimately it was passed in 1976.

Representations were again made to the government during 1979-84 that many NGOs were using foreign funds for:

- 1. Religious conversions
- 2. Politically influencing segments of the population to go in for a certain voting pattern.

Based on these the Central Government came up with certain modifications in 1984. The amendments during 1984 and 1985 have taken cognizance of these factors.

In one of the consultative committee meetings of the Home Affairs Ministry, held by the Home Ministry in 1990, some of the members present, including the opposition parties, felt that a complete ban on foreign contributions was needed. The balance of payments position then was



not favourable enough to take such a decision and the idea was dropped. It appears that control of receipt of foreign funds will continue to be vested with the Home Ministry as it desires that the sovereignty of the country be assured and not jeopardized by the inflow of foreign money. Hence, the FCRA continues to exist.

The Finance Ministry, however, would not like a complete ban on foreign funds because of two main reasons: first, the inflow of foreign money comes in without any obligation i.e., we do not have to export anything in return; perhaps the only obligation is that they are required to send reports to the donor agencies and the Home Ministry. Second, out of the total amount received a minimum of 35% goes towards employment generation.

This Act is very simple. It has 32 sections, 9 rules and 8 forms. The Act extends to the whole of India, and also applies to citizens of India outside India, and associations, branches, subsidiaries outside India, of companies or bodies corporate, registered or incorporated in India.

Definition of Foreign Contribution (by a foreign source)

Foreign contribution has been defined as a transaction which involves the donation, delivery or transfer of

- 1) any article where the market value exceeds Rs.1,000/-
- 2) any currency (whether Indian or Foreign)
- 3) any foreign security (shares, debentures, units etc.,) defined under Foreign Exchange Regulation Act, 1973 (FERA)

This includes receipt from any foreign source either directly or through one or more persons which is deemed to be foreign contribution.

The Act only gives an inclusive definition of foreign source. It includes:

- 1) the Government of any foreign country or territory and any agency of such Government.
- 2) Any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification in the official Gazette, specify in this behalf.
- 3) a foreign company including multi-national corporations.
- 4) a corporation, not being a foreign company, incorporated in a foreign country or territory.
- 5) a multinational corporation within the meaning of this Act.
- 6) a trade union in any foreign country or territory whether or not registered in such foreign country or territory.
- 7) a company where more than one half of the nominal value of its share capital is held, either singly or in the aggregate by specified persons in the Act.

- 8) a foreign trust or a foreign foundation which is either in the nature of trust or is mainly financed by a foreign country or territory.
- 9) a society, club or other association of individuals formed or registered outside India.
- 10) a citizen of a foreign country.

Foreign source does not include any foreign institution which has been permitted by the Central Government by notification in the official Gazette, to carry on its activities in India.

Exemption for certain receipts from the provisions of the Act

Section (8) gives the following exemptions:

- a) By way of salary or other remuneration received from foreign source or by way of payment in the ordinary course of business transacted in India.
- b) By way of payment, in the course of international trade or commerce, or in the ordinary course of business transacted outside India.
- c) As an agent of a foreign source in relation to transaction made by such foreign source with the Government.
- d) As a gift made to a person as a member of any Indian delegation.
- e) From a relative, provided prior permission is taken from the Central Government in case it exceeds Rs.8,000/- per annum.
- f) By femittance received in the ordinary course of business through any official channel, Post office, or any authorized dealer in foreign exchange under FERA.

Registration

An organisation desiring to receive foreign funds has to send an application to the Home Ministry in Form F.C.8 with specific mention of the bank account in which it will receive such funds. Thereafter approval to receive such funds is granted by the Home Ministry. In case the Ministry does not grant permission under Form F.C.8, which automatically entitles the organisation to a permanent registration under the FCRA, the organisation has the option to apply for prior permission. Prior permission is for a specific period and for a specific amount. This permission has to be applied for under form F.C.1 or F.C.1A depending upon whether the organisation is political in nature or not. Where the organisation falls under the category "political in nature," it stands on a different footing.



As soon as F.C.8, F.C.1 or F.C.1A is sent, the Home Ministry sends the copy of the information to the local Central Bureau of Investigation (C.B.I.), who will inspect and report. The Central Bureau of Investigation may give an affirmative report or a non-affirmative report. A negative report may be given in situations where the C.B.I. suspects or confirms that the organization has intentions of or is indulging in activities which are undesirable in nature. In such cases the application for prior permission also will not be granted. Where an application for prior permission is not disposed of within ninety days from the date of receipt of such application the permission sought for in such application shall, on the expiry of the ninety day period be deemed to have been granted by the Central Government. However, where in relation to an application, the Central Govt. has informed the applicant the special difficulties due to which his/her application cannot be disposed of within the said period of ninety days, permission shall not be deemed to have been granted until the expiry of a further period of thirty days. Normally permission will be granted after an affirmative report from the local C.B.I. is given. An agency can apply for prior permission to receive funds any number of times until it gets a permanent registration under the FCRA. It is to be understood that it is not a fundamental right to receive foreign funds. Two cases in this regard are pending in the Supreme Court.

Filing of Returns

The Annual Return is to be filed under form F.C.3 along with the Receipts and Payments Account and Balance Sheet. Form F.C.3 contains details of opening balance, amount received, utilization-disclosing, purpose-wise expenditure separately, and the closing balance. One copy of the Chartered Accountant's Certificate has to be attached to Form F.C.3 along with the audit report, attached to the Receipts and Payments Account and Balance Sheet, and this has to be sent to the Home Ministry in duplicate on or before 31st May after the closure of the accounting year under the FCRA.

Form F.C.6 contains information about articles received in kind including deemed exports to be declared. This form is also submitted when these assets are disposed of/transferred. Form F.C.6 is to be submitted as and when an asset in kind is received or disposed of. No time limit is prescribed for submission of F.C.6. In addition to Receipts and Payments Account and Balance Sheet it is advisable to also send an Income and Expenditure account.

Accounting treatment of certain transactions

Depreciation is not to be included in accounting as far as the FCRA is concerned. However, this is optional. Any sale proceeds of fixed assets bought out of foreign money gets back the foreign money characteristic and hence needs to be reported in the F.C. Account. A separate foreign fund register has to be maintained by the recipient. The cash book and ledger have to be maintained on double entry basis.

An organisation is not prohibited from opening any number of bank accounts for local funds or receipts. However, for foreign funds only one account can be opened unless permission is granted by the Ministry for operating one or more additional accounts other than the one in operation. Sale proceeds of assets bought under the deemed export purchase scheme has to be credited to foreign contribution account.

Transfer of funds is permissible from one agency, having an FCRA registration to another on condition that recipient agency has an FCRA registration number. Where funds are transferred to another agency with FCRA number the recipient agency has the ultimate responsibility of submitting the accounts. Hence, transfer of funds from one NGO to another is not prohibited. However, a pre-requisite for such a transfer is to have homogeneity in the nature of expenditure incurred by the two agencies.

Small donations if received from an individual or a group of people while abroad has to be credited to an foreign contribution account.

Loans between NGOs having an FCRA number are strictly prohibited as foreign money is received for a specified purpose. Money received by NGOs in excess of contractual obligations due to exchange rate fluctuations will have to be declared. In other words, whatever remittance is received in the foreign contribution account will have to be reported in the relevant forms required to be submitted to the Home Ministry.

Where remittances from abroad are more than the actual requirements, the organization may request the funding agency to remit that much less in the next remittance, provided this flexibility is possible within the agreement. The Income Tax department should also be informed of such excess amount received.

Where an organisation receives, apart from foreign funds, also local funds, care should be taken not to transfer foreign funds temporarily to local funds.

Where a revolving fund is given as a loan instead of a grant, the money recovered has to be credited to the foreign contribution account. The revolving fund loses its foreign characteristic when such money recovered is used subsequently for some other purpose. The money recovered is not taxable under the Income-Tax Act provided interest is not charged.

Where the intention of the organisation is not to re-collect the money given under a revolving fund the following method can be followed:

- 1) Such money has to be given as a grant to the beneficiaries.
- 2) Beneficiaries shall form associations with the funds.
- 3) The associations deposit the fund in the bank and get loans over and above the amount from the bank.
- 4) Such loans are repaid to the bank in installments.
- 5) Management and accounting of such funds are done by the members of the association themselves.



6) The accounts of the associations should be checked by the NGO which has provided the grant.

Where the funding agency indicates a certain sum of money as loan it should be treated as such in the books. The funding agency has the right to call for the money as well as authorize the organisation to reschedule its usage later.

Conclusion

The FCRA is political in nature. It is advisable to be careful and not violate the law. The Act is not precise and is subject to varied interpretations. Pragmatism is required when dealing with the Ministry.

Case study

This case study is a typical case where the FCRA is violated by an organisation on several occasions. Such acts of violation could result in the organisation losing its FCRA registration. Not only that, the organisation will also be barred from carrying on its activities in future.

The case study is presented below;

'Swagatham Trust' is working in a tribal area in Kodai hills. The Home Ministry has given its approval for receiving foreign contribution through Account No:808, Canara Bank, Kodai. 'TCF' a funding agency has sanctioned an amount of Rs.15/- lakhs for the construction of a clinic and promised to grant Rs.3/- lakhs each year for medical aid, for the next three years. But they have indicated that a separate bank account should be opened and all the amount given by 'TCF' should be credited in that account and expenditure should be met only from that account. The 'Swagatham' Trust opened another account with Indian Bank, Kodai and transferred Rs.15/- lakhs to that account. The WHO Geneva has transferred to the Leprosy Foundation, London medicines worth Rs.2.5 lakhs which in turn have been transferred to 'Swagatham'. The Trust cleared the consignment without paying any duty, and the medicines were transferred to three cluster offices without any entry in their head office books.

'Tribal' another agency which was working in Ooty was having shortage of funds for the activities. 'Tribal' received sanction from the Central Social Welfare Board for an amount of Rs.1.5 lakhs and requested for a loan of Rs.1,00,000/- from 'Swagatham' for a month. 'Swagatham' wanted to help the agency and transferred Rs.1,00,000/- from their Foreign Contribution account to the account of Tribal, which does not have any approval from the Home Ministry to receive foreign funds.

'Swagatham' wanted to purchase land for the hospital out of TCF funds, and approached Mr. Ambrose who was prepared to sell 1.5 acres. Mr. Ambrose had indicated that the actual cost of land will be Rs.3 lakhs, and he would receive a cheque for Rs.1.5 lakhs and demanded another 1.5 lakhs in cash for which he would not issue any receipt. He also confirmed that there will not be any document or transfer deed and 'Swagatham' has to take physical possession of the land which is the approved practice in Kodaikanal for 'B' memo lands. Since

the land was good, 'Swagatham' agreed to all the conditions and took possession of the land. 'Swagatham' gave an uncrossed cheque for Rs.1.5 lakhs. The secretary of 'Tribal' returned the loan of Rs.1 lakh as cash which was also given to Mr. Ambrose. An ambassador car which was purchased in the year 1989 out of the Foreign Contribution account and whose market value was about Rs.50,000/-, was given to Mr. Ambrose to make up for the balance.

'Help', an agency from Europe, transferred seed money of Rs.4 lakhs for a revolving fund for the 'Tribal'. 'Swagatham' purchased rabbits, goats, etc., and distributed these to 'Tribal', but obtained a pronote (promissory note) from them for the value. Instalments collected from them were deposited in the local fund of 'Swagatham' and further loans were paid to the villagers out of the fund, but the amounts now realized were credited in the Grama Sabha Accounts, which is a separate organization set up by 'Tribal' themselves.

Reflections on the above case are put forth as follows;

- 1. A second bank account for transfer and utilization is not allowed. However, one can try to get permission for the same.
- 2. Receipt of medicines from a foreign country amounts to receiving foreign contribution in kind and hence should be shown in Form FC-6. Non-entry in the books is a violation of the FCRA.
- 3. Amounts received as foreign contribution are meant for a specific purpose. Hence, lending amounts from the contribution to other organisations is illegal.
- 4. Transfer of funds from a foreign contribution account to another organization that does not have an approval to receive foreign funds is illegal.
- 5. Black money transactions are illegal. Payments by uncrossed cheques should be avoided.
- 6. Receiving large sums of money in cash is illegal. The loan amount received back from 'Tribal' should be disclosed in the books of accounts. Non-disclosure of such a receipt is a violation under the Act.
- 7. Purchase of assets without documents is illegal.
- 8. Transfer of any asset purchased under foreign contribution account without disclosing the same in the foreign contribution account is illegal.
- 9. Amounts paid and received from a foreign contribution account as loan for a revolving fund should be disclosed in the same account. To disclose receipts partly in a local fund account is illegal.



Complexities in the Act

The Act has certain ambiguities for which we need to seek clarifications with the Home Ministry. What has been perplexing is, the question as to when foreign money loses its "foreign money" characteristic. The Act has not given a specific definition of second or subsequent sources of foreign contributions. For example, we need to know whether income received on investments in income generating projects, is foreign funds or Indian funds. When such investments are sold how is the resultant proceeds categorized? In the case of interest from investments in fixed deposits the Ministry has in certain cases indicated that such interest should be shown as foreign funds. Also such investments when sold should be shown as foreign contributions. Drawing from the same, in principle, since these monies are not different from the income out of investments in income generating projects such income should also be shown as foreign contributions. In this issue the Ministry has yet to come out with guidelines.

International agencies like the UN and others specified in the notification in the official gazette are exempted from the definition of 'foreign source'. But there seems to be only one notification (No.264 dated January 24, 1980) in which the Government has specified 19 U.N. agencies like UNDP, UNICEF and 8 other International Organizations like U.N. Outer Space Committee etc., while agencies like ILO, WHO, UNESCO have been omitted from the list. There seems to have been no further notification. This leaves agencies that have received funds from the unlisted UN affiliates in an uncertain position.

Conclusion

The objective of the law is to regulate the acceptance and utilization of foreign contributions while being consistent with the values of the Republic. Every citizen has to extend his or her support to these values. The Government can always be approached to clarify various features of the Act. The Research Committee of Institute of Chartered Accountants of India works on several of these related issues.

* Please refer to Appendix for amendments to the Foreign Contribution Regulation Rules (December 1996)

THE FOREIGN EXCHANGE REGULATION ACT, 1973

M.K. Narasimha Rao

In the context of conservation of valuable foreign exchange, the Government of India enacted Foreign Exchange Regulation Act, in 1973, popularly known as FERA. This Act covered various situations in which foreign exchange transactions are involved, namely, exchange for foreign travel either on business or for pleasure, exchange for payment of remuneration to foreign nationals employed in India, exchange received as payment for exports and required for payment of imports, exchange required for the acquisition in India of assets by foreign nationals etc. With the liberalisation of the economy, some relaxation in these provisions under FERA have been made and the position as of January 1996 is described here.

Introduction

The Foreign Exchange Regulation Act was first enacted in 1973 with the intention to regulate and monitor the flow (both inflow and out flow) of foreign exchange. The act has undergone a number of changes since it was first enacted. It was enforced very rigorously, when the foreign exchange position was very critical. Arising out of economic liberalisation a number of provisions are either modified or withdrawn. Consequently, the availability of foreign exchange for genuine needs is relatively free, even though convertibility on capital account is still far away.

In this article some of the important provisions of the Foreign Exchange Regulation Act so far as it relates to NGOs and people working therein are discussed. It is made clear that what is stated in this article is the legal position obtaining in January 1996.

Availability of Basic Travel Quota (BTQ):

Indian nationals in possession of a valid passport and a ticket are allowed to obtain from an authorised Foreign Exchange Dealer US \$ 2000 (formerly \$ 500 called Foreign Travel Scheme (FTS)) or in any other equivalent hard currency per visit overseas once in a calendar year (formerly three years). A small amount of the allowed exchange could be taken in currency and the balance in Travellers Cheques. This is applicable for visits to all countries, except Nepal and Bhutan, for which separate rules are framed.

In case of visits abroad on non-tourist visas (business, professional visits etc.) separate rates are applicable. The admissible foreign exchange is on per-diem basis which is in the range of US \$ 350/500 upto 45 days. However, authorised dealers may in special cases grant exchange in excess of these limits depending on the need, bonafides etc.

Any unutilised foreign exchange in excess of US \$ 500 has to be surrendered to a foreign exchange dealer within 90 days of return from abroad.



Hospitality to foreign guests:

Indian organisations can meet expenses on travel, local conveyance and food and accommodation on their foreign guests while in India in connection with the business of the host organisation.

Employment to foreign nationals:

NGOs may engage the services and pay for the services rendered by him in India in Indian currency of a foreign national without approval under FERA, if the foreign national does not intend to seek repatriation of any amount out of his earnings in India.

Holding of Foreign Exchange:

Indian residents can hold an amount not exceeding US \$ 500 out of payments received in foreign currency from any person resident outside India towards services rendered in India, excess if any being surrendered to a foreign exchange dealer.

Acquisition of assets by foreign nationals:

Foreign nationals/organisations/companies including foreign nationals of Indian origin cannot acquire, hold, sell, lease, or mortgage any immovable property in India without the prior approval of the Reserve Bank of India. However this does not apply to lease/mortgage for periods less than five years.

Acquisition is subject to the following:

- a) Application in the prescribed form is made to the central office of Reserve Bank of India.
- b) The consideration is paid out of free inward remittance of foreign exchange through normal channels.
- c) The property is acquired for a bonafide purpose.

Sale of property so acquired by a foreign national cannot be done without the prior approval of the Reserve Bank of India with facility for repatriation, provided that three years have elapsed since acquisition of the property and the amount of repatriation is restricted to the foreign exchange component of the cost of acquisition.

- A foreign national shall be deemed to be of Indian origin if:
- a) He/She at any time held an Indian Passport.
- b) He/She or his/her father or grandfather was a citizen of India by virtue of the Constitution of India or the Citizenship Act 1955 (however citizens of Bangladesh or Pakistan or Afghanistan or Nepal or Bhutan or Sri Lanka are deemed to be not of Indian origin).

SECTION III

MANAGEMENT



MANAGING A VOLUNTARY AGENCY AS A "PROFIT BODY"

M. Anand Kumar

With more claimants for aid, some from the West, and with priorities of donors shifting from strict social development to economic development, there is now a greater need for voluntary agencies to maximize their results with a given set of resources. Such a change does involve an appraisal of the processes of operations and of systems used by the voluntary agencies. As a guide, we have the example of the well-managed corporate sector. The principles and practices of management adopted by these profit-making bodies may not exactly be transplanted to the voluntary sector, but with appropriate modifications, may be used with advantage by them.

Developing a sound mission statement, providing good leadership, organizing, motivating and training adequate human resources and rewarding them reasonably well, maintaining a good accounting system capable of producing timely reports, programme planning, budgeting and control of costs are some of those management aspects. The ultimate test, however, is the effectiveness and efficiency of the development activity, leading to self-reliance and dependence on one's own resources.

Introduction

The underlying idea of this paper is to initiate a thought process which would result in development of management practices for development agencies. This paper is more a reflection of years of experience with development agencies as well as other ideas published in books and journals. An attempt is made to analyze the development agencies and compare them with profit-making bodies. This does not automatically imply that the latter are well-managed. The comparison is merely to draw the attention of the readers to the management practices followed by such bodies.

A look towards the past reveals that the Gram Udyog movement of Gandhiji laid the foundation for voluntarism in India. Voluntary agencies came up as a response of the middle classes, to do some good for the deprived whether it was in health or education, as a matter of charity. On the one hand there were situations and communities to be ameliorated. On the other hand, there was the public-spirited attitude of the middle classes to provide exactly that amelioration. Voluntary agencies as ameliorating bodies had to gear themselves up (be empowered) to obtain resources without liabilities for purposes of charity. The distinction between profit-making bodies and voluntary agencies thus became clear. The striking difference in the concept between voluntary agencies and profit-making bodies is the not-for-profit concept of the former. One of these important differences is that management of a voluntary agency extends beyond its four walls involving intimately, the clientele with whom its relationship becomes personal. In the case of a business unit, the relationship is indirect via the market.



Initially, even in the West, no one talked of a sectoral approach in the field of development. Schools were schools, hospitals saw themselves as not as a part of the education or medical system. This is true of India even today, if not totally, at least to a great extent. While, no doubt, some awakening is taking place and attempts are being made to bring about common forums to tackle problems, yet the sectoral approach is not complete. Voluntary agencies tend to restrict themselves to their own backyards on the grounds that they are different from industries and cannot use the strategies and practices adopted by the latter.

It is obvious that as organisations voluntary agencies do something different from Government which legislates and controls and from business which produces and sells; their output are changed human beings and a changed community. Thus ultimately, the only difference in their case is the definition and nature of profit, the process of making profit and most important of all its appropriation. Whilst in the case of profit-making bodies the appropriation of profit is by the ownness, in the case of voluntary agencies the appropriation is by the community at large. (This being so we should easily adopt and adapt practices followed by proft-making bodies for better and continued profitable existence termed by us as "sustainability").

Common Factors:

All along, the word "management-practice" has been brushed aside in the voluntary sector as not applicable in view of the voluntary and charitable nature of operations. But now, after a careful analysis it is observed that they are similar to profit-making bodies so far as their operative mechanism is concerned. They are also "organisations". This word itself clearly implies structured and disciplined functioning. Voluntary organisations are diffident in trying out new practices, policies or ideas for improving themselves. At the same time they talk about "sustainability". Sustenance or continued existence cannot come about unless organisations manage themselves profitably. It is like expecting longevity without taking basic health care. An analyses of common factors for profit and non-profit bodies indicates the following commonalties:

Mission Statement
Project identification
Infrastructure
Pilot project or trial runs
Management
Human Resource Development

While the need is thus established, there is little available to help voluntary agencies with leadership and management training specifically developed for them. Most of what is available was originally developed for business, which does not pay special attention to introducing innovation and change in institutions where dependence on human resource support and financial support is on the outside both of which it cannot command.

Like all other processes which have evolved from within, need-based and out of experience, even management practices have to be developed from within and the objective of this paper is not to preach management but to instigate a thought process which would lead to the

development of management practices for the voluntary sector. With this in mind, prima facie, certain practices followed by profit-making bodies have to be examined. There is also a need to modify or abandon certain practices commonly and instinctively followed by voluntary agencies with the ultimate objective of better and profitable management, ensuring sustenance.

Concept of profit

Profits are the returns for investment and the rewards for entrepreneurial risk-taking. Looking at it from this angle even in the case of developing agencies, while the nomenclature could be different, there are comparable phenomena, e.g., the programme outlays are the investments and if the community responds well to the programme and there is improvement in its socioeconomic status, that would be the profit. Thus the only distinction between profit-making bodies and voluntary agencies is the nature of profits (cash vs programme success) and the source which appropriates the profits (entrepreneur vs community). Further for profit-making bodies the nature of profits would involve the following:

For the owners: - Increased returns on investment

Appreciation of investment

For the employees: - Better remuneration/facilities.

- Better opportunities for consistent growth.

For the organization - Increased productivity

Cost reduction

- Asset build-up

- Increased reserves

- Market growth

In the voluntary sector so far as employees are concerned the nature of profits would be the same as in profit-making bodies. In the voluntary sector instead of the owners we have the community. Profits for the community would imply a better socio-economic status. Unlike profit-making bodies, in the case of voluntary agencies, on a broader plane, asset build-up and reserve/liquidity growth do not necessarily imply profitability. On the contrary, experience has proved that the converse is more true. Heavy asset and reserve build-up has resulted in autocracy on the part of top management, disgruntlement in employees, wasteful expenditure and ultimate fading away of the objective/mission. Finally, the organization goes into oblivion.

Thus profitability for a voluntary agency would imply:

- * Self-sustenance ensuring independence from the grant culture.
- * Assured community need leading to continued organisational existence.
- * Better programme implementation.
- * Better financial management leading to reduction in costs.



Better programme implementation

The life source of a voluntary agency being its programmes, obviously the primary factor for better management is better programme implementation. The first step towards this is to examine the mission definition. It is a well known fact that all missions do not work. And if the mission does not work totally or even partially, there is loss of purpose, waste and depletion of scarce financial resources and most important of all the community's faith and belief in the NGO is lost or reduced. The first task of the development manager is to define the mission statement of the organisation. The mission statement should be properly defined, operational, easily understood and capable of conversion into specific tasks.

This would result in proper definition of everyone's individual role and also enable a costbenefit analysis of the programme. It should have a built-in process of on-going review, revision and organised withdrawal or streamlining.

Any organisation can generally trace its birth to one of the following factors viz. perception of community need, breakaway or off-shoot of an existing organisation. A good number of organisations come under the first category. In such cases what usually happens is that a cloning approach is used. The legal and organisational structure, programme logic and methodology of the parent organisation are replicated and in the process, invariably the mistakes are also replicated. It is an usual phenomenon that the second level managers, after a period of working in a programme, tend to separate from the parent organisation and start their own organisation. They tend to copy the parent organisation. Some of the more resourceful social workers, occasionally, try to improvise out of their experience, more so on account of a changed programme philosophy. The organisation's mission is dominated by the "founder trap"- a condition where the founder is unwilling to surrender or dissipate control of both the mission definition and implementation. Another factor leading to mission definition and at times the birth of a new organisation is a change in the donor's policy bias. The strong desire on the part of the donor to implement its policy also encourages breakaways or new organisations, lured by the prospects of funding. Such organisations suffer from the phenomenon of "donor trap." There is nothing legally or ethically wrong in this provided the donor policy bias has been properly defined, tried and tested and critically evaluated. No doubt in developing economies, the donor policy bias is backed by a constantly available market need, but more often the policy is governed by the understanding and bias of donors who are not familiar with the local socio-economic culture and nuances. In most cases the programmes advocated to satisfy the so-called community needs are not pre-tested.

Whilst the manner in which a development agency emerges is quite a natural and acceptable phenomenon, what the development manager should refrain from doing is to blindly copy the mission statement of the parent organisation. She/he should necessarily go through a critical process of studying and analyzing the parent organisation and thereafter designing the programmes.

Leadership

In the case of voluntary organisations one thing that is common and predictable is crisis. This is more on account of the fact that voluntary agencies are human change catalysts and are dealing

with a complex psychological environment characterized by suppression. The crisis situation is the one in which the entire organisation depends on the leader. Therefore the next factor that needs to be managed is the leadership role. This is true both for the organisation as a whole and also for individual programmes.

The role of the leader is that she/he has to fit in as the leader and has to fit into the tasks and expectations. The selection of the leader is on the basis of what the individual has done and what are her/his strengths.

She/he should be capable of meeting the key challenges in the organisation. The selection is also based on the leader's character and integrity. The success of a leader largely depends on her/his ability to recruit the right people, and the ability to raise the necessary funds along with her/his staff. She/he should be able to express the values of the organisation and this to a large extent depends on how she/he is accountable. She/he should ensure that development is oriented towards the community and not towards the organisation. A leader should not always assume that what she/he does is obvious to everyone around; neither should she/he believe that everyone has understood what she/he announced. She/He should not be afraid of the strengths in the organisation and should share the success with the entire staff.

Programme Planning, Design and Setup

The next important factor for better programme implementation is the programme-planning, design and set-up. Unfortunately lack of planning, particularly strategic planning for policy development and programme planning for operational purposes is perhaps one of the most visible management problems faced by voluntary agencies. On account of funding constraints and scarcity, non-governmental organisations accept almost any programme that comes their way without going in for the mission analysis. The next common mistake is that ideas are directly operationlised.

To avoid these pitfalls the voluntary agencies would do well to adopt the practices followed by profit-making bodies especially the larger ones before setting up an industry:

- * Market Research/Product selection

 This is done to first, analyze and assess the market need and, second, the demand and supply gap.
- * Technology Evaluation/Selection

 Evaluation of the availability, acceptability and suitability of the various technologies that are available.
- * Resources Evaluation/Selection

 Availability, suitability and financial viability of various resources like land, equipment, materials and personnel.
- * Economic Evaluation

 Scale selection-project cost considerations, means identification, feasibility and profitability study, repayment potential.

- * Project Implementation

 Scheduling, implementation, evaluation of implementation and critical path method.
- * Trial Run

This factor is the one that voluntary agencies should strongly try to emulate. Instead of jumping from the idea stage to fullscale operations it would be better to implement a pilot project on a small scale and restrict to a small target area, implement it in depth, evaluate and carry out corrective modifications based on experience.

Financial management

Accounting and financial management, have without any doubt, been the least of the strengths of development agencies. Probably this traces its roots to the fact that when the process of development was started it was more a charitable activity on the part of a few individuals and groups who used their spare time and resources and the programmes were not socially complex as they are today.

They handled the finances individually and therefore the need for accounting and financial management was practically non-existent. Yet another major factor for this situation is that most of the development agencies operate in rural areas and the availability of suitable trained personnel is often posed as a constraint. Despite the marked change and growth in the development phenomena from charitable amelioration to an organized process of community change and shifting from limited, personal and sparse resources to mammoth public funding both from within and outside the country, the areas of accounting and financial management are still sadly neglected and lagging behind. In the case of business entities, proper accounting and financial management is necessitated and ensured on account of there being a 'bottom line' and responsibility to the owners/shareholders to increase profitability by increased productivity, cost reduction and timely arrangement of finance on easy terms. Further, legislations which apply to business entities and financial institutions insist and necessitate the maintenance of accounts according to standards of international acceptance, audit and reporting. Penalties for noncompliance are stringent and in extreme cases could result in criminal prosecution. No doubt there are legislations which apply to voluntary agencies and donor agencies also are beginning to stipulate accounting and reporting standards, but often a very soft and liberal attitude is taken of non-compliance which is shrugged off with the excuse of lack of knowledge or trained personnel. Grants and funds from donors are free of cost and neither are there entrepreneurial rewards like dividend payout and performance indicators like earnings per share and share value which necessitate better financial management. However a careful analyses of issues reveals the need for better accounting and financial management in the case of voluntary agencies since the accountability is multi-directional; donors-Government-community-organisation.

Monitoring on the part of donors is viewed as interference. No attempt is made to visualize how donors raise funds from small contributions by the public at large and from their governments, which they use freely for the positive development of the community and that donors themselves have a multi-dimensional responsibility to their own governments, contributors and organisations.

It is now a known and proven fact that lack of financial discipline is actually harming the sector. Funds are no longer freely available and donors themselves are facing budgetary constraints. Grants are being stopped, a feature which was unheard of in the past. The government is prohibiting the receipt of grants in certain cases by cancellation or by denial of registration. Most important of all, the community itself is taking a critical view of organisations which are not properly managed. Fortunately today, there is a slow but conscious effort being made by people working in the development sector to rectify this situation.

Let us examine the practices adopted by profit-making bodies for proper and timely accounting and financial management and see how far they are suitable to development agencies.

Better and Timely Accounting

There can be no doubt that the first aspect of financial management is the standard, quality and timeliness of accounting. The success of an organisation cannot merely be measured in terms of its objectives and programme achievement. The cost factor has also to be taken into consideration. When the evaluation of an industry or profit-making body is done, instead of a mere technical study a techno-economic study has to be made. Technical feasibility without financial viability is not acceptable to any category of profit sharers, be it the shareholders, employees, organisation or financial institutions. Voluntary agencies are no exception. For instance financial viability projections made during the pre-project stages are based on certain assumptive parameters and conducive conditions prevailing such as free and timely availability of resources, optimum utilization, uninterrupted flow of operations and ideal market conditions. In practice, however, the converse is usually true. Resources are not freely available, financial constraints affect optimum utilization and ideal market conditions do not prevail. Experience of the economic wave phenomenon, of constant rise and fall, has adequately proven that progress and profitability can only be achieved if we can withstand the hazards of the fall, till the next cycle of being pushed on to the crest. The organisation can only survive if it is able to pull through the trough or the period of depression. And this can only take place if maximum productivity and conservation of resources is ensured during the boom periods. Resource conservation can only be achieved by constant monitoring. We cannot monitor the financial position if timely accounting of a reasonably high standard does not exist. Often it is argued that there are no trained personnel and lack of knowledge and availability of personnel is put forth as constraints. The real problem is that no full-fledged attempt is made to correct the situation as these constraints are controllable and capable of being rectified. Accounting being nothing more than the recording of receipts and payments, one fails to understand how there could be a lack of knowledge or understanding.

No one is a born accountant. One becomes an accountant by learning. Today, in industry, some of the successful heads of finance are not chartered accountants but are from an engineering background. Recently a large scale industry converted its finance manager to a production manager. Conversely in a development agency an auxiliary nurse is heading the management and financial functions of a large thrift and credit programme for women. Accountants have



to be trained and there is no dearth of qualified trainers. If, despite this, the same situation still prevails, both the development managers and accounting professionals are equally to blame.

The development manager should understand the importance of accounting and not look down up on it as a nuisance to be tolerated. Accounting and auditing professionals should not merely resort to post-programme financial audit or certification sitting in their offices. They should have a constant touch with the organisation by field visits and a system of participatory evaluations. They should study the organisation ,its objectives and programmes and most important of all the constraints faced. A constant and consistent interaction and dialogue has to take place between the auditors and the client organisation/personnel which would result in on-going education and training of both sides and would automatically ensure better quality and timely accounting.

Budgeting and Financial Planning

While accounting is no doubt important, this aspect takes place only after finances are spent and serves more as a monitoring tool. A more important factor of financial management is the preparation of the programme budget and planning finances. To some extent, this exercise is carried out by medium and large NGOs but then only during the interval of the completion of one programme period and the beginning of the next programme cycle (generally 2 or 3 years), for the sole purpose of fresh funding from the donor agency. Some organisations tend to get their budgets prepared by outside professionals or take the assistance from employees of large NGOs which may result in budgets that are not realistic and do not reflect the ideology of the organisation or its objectives. In some organisatons budget is made more as a means of obtaining grants and once this is achieved, it tends to be pushed into the filing cabinet, only to be retrieved at the end of the programme cycle.

Similar to the mission statement suffering from the founder trap or the donor trap, budgets are also affected by these phenomena. Another shortcoming is that the budget is more organisation-oriented than being goals-oriented. Sometimes budgeting is resorted to finance items not considered as priority for the community by the donor agency, such as land or corpus fund.

Proper utilization and conversation of finances

This is perhaps the most important aspect of financial management and the profitable existence of an organisation takes place only by properly utilizing and conserving its financial resources. In the case of development agencies this is sadly lagging behind. As mentioned earlier this is due to a plethora of factors such as the liberal and sympathetic attitude on the part of the donors, cost-free funds, unstructured approach, donor and founder attitudes and most important of all, imitating or past precedents other organisations.

Let us examine some of the areas where development agencies need to exercise more financial discipline.

- * Reduction of costs directly such as cutting down on food and travel cost of participants of training programmes by conducting the programmes at the target area rather than at the NGO headquarters.
- * Avoiding investment in sophisticated electronic equipment like intercoms, computers, facsimile machines and especially photocopiers, which tend to break-down frequently in rural areas due to power fluctuations.
- * Avoiding investment in un-productive assets like lands which could instead be obtained on lease.
- * Avoiding investment in and maintenance of a large fleet of vehicles and motor cycles which more than transport convenience tend to leave the organisation with a heavy burden of fuel and maintenance expenses.
- * Avoiding unnecessary and lavish expenditure on hospitality during the visit of donor representatives and donor country dignitaries.
- * Economic purchases by comparative supplier evaluation and selection.
- * Profitable deployment of funds in fixed deposits and permitted securities/investments rather than in low return yielding saving bank balances. This would also compel the organisation to properly plan its requirements.
- * Proper recovery of consumption loans from beneficiaries.

In the case of multi-donor funded organisations, utilizing common resources rather than having separate infrastructure for each donor should be considered.

Conclusion

Changing from "Grants" to "Own Means" Culture - A journey towards self-reliance.

Development culture today is changing from the provision of assistance or inputs to a process of education and awakening. More importance is being given to training and educating the target community to use available/alternate resources rather than assisting them by direct provision of inputs. Mere provision of grants or inputs does not ensure development.

On the contrary, during the field audit of post-cyclone programmes, it was revealed that the sympathetic pumping of funds and inputs by relief agencies, both international and national, has on the contrary harmed the beneficiaries and virtually killed their capacity and willingness to work and made them the slaves of a "dole system". Even donor agencies agree with this view point. In fact many donor agencies invariably insist for a 25 per cent "own means"



contribution. This is not with a view to impose their whims, but in order to gradually ensure self-sustenance. Unfortunately this is not often realized in practice.

Even in the case of profit-making bodies, funding organisations insist for a 2:1 debt-equity ratio since it is a time-proven fact that a higher debt component harms the organisation which is never able to service its debt, somewhat similar to the case of bonded labour. Reduction in own means also results in overtrading and there is a constant working capital gap. Similarly in the case of development agencies total dependence on grants would never allow either the organisation or community to attain self-sustenance. A total change from grants to own means is not advisable since it may lead to unwanted withdrawal symptoms and would result in programme failure. The change has to be deliberate and phased.

Some of the practices that could result in the raising of own means in the long run are:

- Raising a percentage of local contributions in cash rather than by food for work programmes.
- Reducing programme budgets and costs recruiting "in-village" field workers or having a de-centralized administrative set-up cutting down on travel and vehicle maintenance cost.
- Concentrated and in-depth development activity in smaller target areas which would ensure improvement of the community economic status enabling them to bear part of the administrative costs.
- Starting income generation programmes in a more concentrated manner and not by conducting training and providing inputs or tools.
- Starting thrift and credit programmes and narrowing the gaps between the target community and commercial banks.
- Actively co-operating with government-based development programmes and using available government infrastructure and inputs.

To conclude, the profile of development agencies is like our own households where the proper management of finance is directly related to better living standards and an increase in family wealth which is the predominant objective of any business enterprise.

THE SOUTH INDIA PROJECT: A CASE STUDY

Ajit Mani and Vivek Warrier

After providing the conceptual anchoring of the terms "development" and "change", a reallife case study is presented. In this case study, the devotion and credibility of the founding father attracts more donor funds but the limitations of internal accounting and management systems soon become apparent. Consultants are called in to study the problems and suggest solutions. Their recommendations for a more responsive accounting and management system are described. The possibility of a computer package for the accounting system is also mentioned at the end.

Conceptual Framework

This case-study is based on our professional experience with a development project with which we have been associated for over 6 years. We are currently completing an organisational evaluation of this project. Although we have disguised the names of the project and the project-holder, all the situations, facts and figures described or used in this case study are real.

Before we actually go into the case study, we would like to develop a conceptual framework to enable us to understand the processes being described.

Development Projects

The term "development" is understood by most people to mean economic development, by which the GNP (Gross National Product) of a country is increased, while altering the character of its product and its employment pattern. Typically there is a reduction in the proportion of the product contributed by the primary sector (Mining, Agriculture etc.) in favour of secondary (Industry, or Blue Collar) and tertiary (White Collar) sectors, with the attendant change in employment patterns.

There has been a growing realisation that economic development is only one aspect of an overall concept of development, which includes political and social factors.

Three important characteristics of development *1 (Goulet - 1971, quoted and rearranged by *2 Lissner-1977) that all of us would be familiar with are reproduced below:

Successful development activity must:

- 1. Invite broad participation in decision making at all levels as a precondition,
- 2. Result in a fairer distribution of wealth, and respect for basic human rights, and
- 3. Show respect for cultural diversity.

^{*1(}Goulet - 1971, quoted and rearranged by Lissner -1977)

² Lissner, Jorgen, The Politics of Alturism, Lutheran World Federation. Geneva, 1977.

The Management of Development Projects

It is not easy to assess the performance of development projects because they are not concerned with the creation of a surplus of income over expenditure.

Although there may be broad agreement between the value systems of the development entrepreneurs of the grassroots level Non-Governmental Organisation (NGO), and the International NGO-aid bureaucrats who select projects for funding, development projects in general have ambiguous goals. This is due to the intense value or ideology bias which drives development work. We have introduced participation in decision-making as a precondition for overall development, and this very factor diffuses focus by accommodating the biases and preferences of a large number of people. Several project entrepreneurs have sought to overcome this problem by the installation of authoritarian regimes which go through the motions of participation, consultation and debate. This approach normally results in organisations with a single power centre headed by a charismatic leader, and weak second level management.

An important question is whether International NGO (INGO) aid has been allocated to India on the basis of the greatest need? The answer appears to be negative. Some states like Tamil Nadu, Maharashtra and Kerala which are by no means the most underdeveloped states in India have received the maximum aid remittances. This clearly shows a preference for funding projects in those states where there is greater NGO activity and INGOs can report the best results to the constituencies from where they raise funds.

In other words international NGOs have to be accountable for the money they spend in India. It is simply not possible to give money to projects to spend as they think fit, on the premise that development cannot be measured and must not be 'policed'.

It is estimated conservatively that foreign remittances amounting to Rs.650 crores have been received by Indian NGO projects during the year April-March 1992.

Criteria for Funding

Although development is difficult to quantify and measure, we find that some projects are perceived to be successful in their development work and are singled out by several agencies for continued funding. Close monitoring of projects, evaluations, and subjective judgements are used to decide whether some projects should continue to get funds, and whether some projects should be phased out.

Success and Scaling up

"Successful" projects are constantly persuaded to extend their activities, and as a result, their operations become complex and the volume of funds they handle become very large, often exceeding a crore of rupees per year.

The Problems of Growth

As projects become larger and begin to handle greater volumes of money, they need to hire professionally qualified staff who bring with them a work culture which may be slightly different from that of the project founders. In order to attract professional staff, larger salaries have to be offered, which create great disparities and friction between the professional staff and the already existing staff who are proud of their commitment and low salary level.

Old systems are replaced with new systems, and the "personal touch" which was possible between the project director and the staff begins to disappear as new layers of heirarchy distance them. Very often old systems are replaced with great haste, and new systems introduced without adequately explaining to the od staff why these changes are taking place. In any event, the key to organisational change is the commitment shown by the Project Director who is the undisputed leader of the group, to the new changes. Any dilution in his or her commitment will throw the whole programme of change into limbo.

One of the first systems to be replaced is the accounting system. In many cases, an entirely new system has to be created, because no proper system existed.

External and Internal Compulsions

Change is inevitable in development work, and it can indeed be said that development agencies exist to bring about change, change in favour of the deprived and disadvantaged. While many of these changes are brought about by external compulsions, some changes are also brought about by internal compulsions.

External compulsions

Various government agencies need to be kept informed of how NGOs have spent their money. This is one way by which the government insists on accountability. Failure to comply with government regulations may involve the cancellation of FCRA registration and various other punitive measures which puts NGOs out of business. Donor agencies want to know how their money has been spent. Each donor has a different way of demanding accountability. There is a radical development argument that the donor should give the money to an agency and forget about it. This is a very naive argument, since the donor agency collects money from the public or their government who in turn demand to know how their money was spent.

Some donors may be very strict in their supervision of project accounts and project work. Those agencies which cannot accept such conditions can refuse to accept money from such donors. Similarly, the donor can refuse to continue funding agencies which refuse to comply with their requirements.



Internal compulsions

An agency that started out with a funding of a few lakh rupees and has suddenly crossed the one-crore-rupee mark will need to monitor its transactions systematically for its own information and better management.

Change

Ever since the oil shocks of the seventies, changes have been taking place all around us with a hitherto unknown speed.

We find that much of the change takes place on three distinct but inter-related aspects of our environment:

- 1. Social
- 2. Economic and
- 3. Technological

Since change is inevitable, rather than trying to ignore it, the answer is to anticipate and manage change. In response to changes taking place all around us, we need to change our organisations and ourselves to keep pace. Whenever such change is imposed on organisations, the people involved in the change and affected by it are the key to the successful implementation of a new order.

Resistance to Change

Implementing organisational change is never easy. People accustomed to old ways of functioning prefer not to change their ways.

Resistance to change is of two major types:

- a) Systemic and
- b) Behavioural

Systemic resistance arises from inadequate information, knowledge, skills and managerial capacity. In that sense, this type of resistance can also be called a cognitive resistance to change. The less people know about why changes are taking place, the more they will feel inclined to stick on to the old, with which they are very familiar.

Behavioural resistance is the result of reactions, perceptions and assumptions of individuals or groups in the organisation. This can be also called affective resistance to change. Here again, lack of information and knowledge makes people resort to assumptions, which in turn lead to suspicion, lack of trust and feelings of being threatened.

Reorganisation of Power Distribution

It is often said that just as energy is the central theme in the physical sciences, power is the central theme in the study of organisations. One of the results of organisational change is the redistribution of power. Personal power and patronage are now reduced, while power flows towards impersonal systems, and professionals who administer these systems. The tension set up between those acquiring power and those losing power can result in devastating outcomes such as resignations or dismissals of key individuals which is destructive for the organisation.

New Systems and People

How do new systems and people affect the organisation? How can the negative impacts of new systems and people be kept to a minimum?

New Systems

In these notes, the emphasis will be on accounting and related systems. The first impact of new systems is seen in the increase in paper work. More forms have to be filled out, reports have to be made, budgets have to be reconciled. New work in fact leaves less time to be in the field. Very often it is not clearly understood why cash payments will be made only in the afternoons, or why indents have to be prepared for stores every Friday for issue on Monday. All this is irritating to people who have been accustomed to getting what they wanted anytime they wanted it.

New people, new skills

In order to make new accounting systems work, qualified accountants have to be recruited. These professionals have a market rate, and often have to be paid much more than the ordinary project staff who are there mostly for their "commitment" to development. Here again tensions are set up between the newcomers and the old, which often end up as trials of strength. New work culture may include details of dress, manner and professional conventions, which people accustomed to the old informal systems find unbearable. When systems change, people also need to change. People who migrate from villages to cities find that city life makes demands on them which forces a change in their life patterns. Trains and buses observe their timings, not ours. We have to queue outside the milk booth for our milk. Shopkeepers are not happy to give credit unlike as in the village where every body is known to everybody else.

Case Study-The South India Project (SIP)

SIP was founded some 20 years ago by a British Missionary, Father Murphy. Most of the senior staff at SIP have been with Father Murphy for several years and are dedicated to the programme. The accountant is due to retire this year, and Father Murphy has been looking for a replacement.

The heads of departments report directly to Father Murphy who is the Programme Director, and is responsible to the Executive Committee.



Hivos

SIP Activities

The SIP has the following programme components:

- a) The SIP medical programme
- b) Building programme
- c) Water
- d) Education
- e) Industry
- f) Agriculture
- g) Community Development

Administration, Finance and Accounts

SIP is a typical example of a small voluntary agency that has grown into an institution. The present accountant, Mr. Arokiaraj is an ex-service man and has done all that he knows best to keep the books of SIP. However, there are no standard systems, and there is a total lack of planning, and budgetary control. In the absence of any centralised control of finances, various departments practice various ad-hoc accounting systems. Staff are seen to be drawing salary advances on oral instructions from the Project Director, and no time-limits are set for repayment. The Agriculture sector manager often sells produce without bills and purchases inputs without bills or vouchers. There is no depreciation fund for asset replacement, and various accounts adjustments including ad-hoc transfer of funds between account heads take place.

A pressing concern is to devise a master budget for SIP showing all income sources and expenditures in one document. Budget realisations must also be done against such a document.

Mr. Parmesh, the newly appointed Assistant Director has interviewed and appointed an accountant with a masters degree in Commerce and impressive experience in voluntary organisation financial accounting.

In addition, Parmesh is trying to get expert help from outside to look at SIP's accounting system, with a view to a major overhaul resulting in better information systems that are easily understood by every member of the SIP staff.

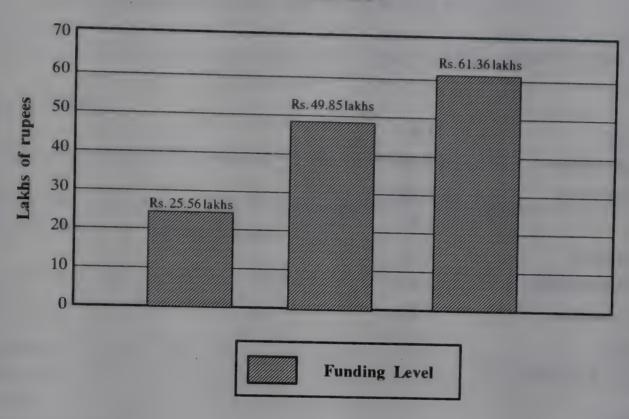
Funding Growth

Due to the high credibility enjoyed by Father Murphy, and the effectiveness of his programmes, SIP's funding showed a remarkable growth between 1985 and 1987 as shown in the chart below:

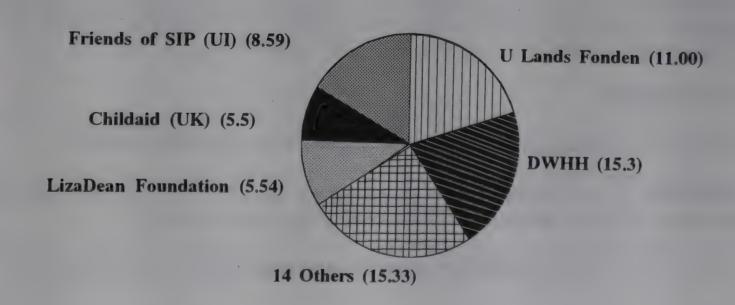
SIP-Funding growth 1985-1987

The funds were received from 5 large agencies, and 12 small agencies and individuals as shown in the chart below:

SIP-Funding Growth 1985-1987



SIP-Funding Growth -1987 Lakhs of Rupees



All the funds were earmarked or designated as funds for specific programmes. However, since no cash flow planning was done, and there were frequent delays in receiving foreign remittances, it was not unusual to "borrow" funds from one account and use it for implementing some other programme. Several such transactions created a great deal of confusion for the auditors at the end of each year. Some funders showed irritation that their money was not being properly accounted.

The project had a plethora of programmes on which several lakhs of rupees were spent each year. The programme thrust can be seen from the expenditure levels against various line heads:

SIP Programme Thrust 1987

Rs.(in Lakhs)

Housing	-	23.01
Drought relief	•	11.23
Miscellaneous	-	8.10
Water	-	7.95
Sponsorship	-	4.14
Child education	-	3.93
Foster mother	-	1.28
Leprosy		1.13
General assistance	-	0.57

System Study

Brief Background

This part of the presentation deals with how the financial and accounting systems of the South India Project was studied, and a solution developed. The case-study has been developed from the personal experience of a student of the Indian Institute of Management, Bangalore (IIM) who did an organisational project as part of the MBA programme.

Problem Statement

The problem as perceived by us could be summarised in the following statement:

"Inadequacies of the existing systems of accounting and reporting to comply with the requirements of donor agencies, government and internal administration".

Two of the terms used in the problem statement have been explained in detail below:

Inadequacies

a) Lack of standardisation in collection and collation of accounting information.

- b) Lack of a set of rules and regulations to control and monitor the flow of funds.
- c) Lack of a proper system of reporting for accountability.

Requirements

- a) Periodic reporting to donor agencies on progress of activities funded by them and corresponding accounts.
- b) Maintenance of accurate records on all transactions and generation of information regarding the financial status of the organisation (as per government guidelines and internal criteria)

Problem Analysis

In our study, we found that there were three major reasons why the problem had become serious:

a) The growth in funding at SIP had increased exponentially over the years, and donors had begun to insist on increased accountability.

SIP did not have a proper set of guidelines to ensure accountability. It had become extremely difficult to satisfy funding agency requirements.

b) Traditional systems of accounting that existed were inadequate to handle growth. There was tremendous resistance to change throughout the organisation. New systems can only be introduced when there is a total commitment to the system from the very top rungs of the management hierarchy.

Due to the inadequate systems, the potential for further development programmes had reduced, and SIP was reluctant to take up new high-need projects.

c) The objectives and emphasis on development projects were centred around the qualitative aspects of operations and project goal realisation. Accounting and Costing were seen as necessary evils and not as tools to management control of the resources available to the project.

Solution Development

In the development of a solution, we found that any new system would have to cater to two important requirements:-

a) Maintenance of accurate records of all transactions of the project and the generation of information regarding the financial status of the organisation.



b) Provision of quality information for periodic reporting to donor agencies on the progress of activities funded by them and how their money had been used.

System Study

During the study we found that one of the root problems lay in how expenditures were recorded at the scheme level. The term "Scheme" was used by us to introduce accountability and indicated the intersection of a specific donor with a specific activity. For example, the project could have two education schemes, one funded by UK-Aid and the other by French-Aid. Costs would have to be recorded under separate account heads to distinguish the two schemes. There would have to be a standard format for recording such transactions.

Lack of Standardisation

It would appear that lack of standardisation was convenient to many people. They could follow ingenious and unique methods of conducting transactions. The result was a babel of accounting practices which defied consolidation.

Lack of Specific Guidelines

Due to a preoccupation with sincere project action and a general lack of familiarity with accounting practice, Father Murphy did not think it was necessary to issue specific guidelines to staff. This gap encouraged a sense of freedom that was detrimental to the project. Regardless of the intentions of any individual, the project had created an environment where funds could be misused.

Lack of Monitoring Systems

Due to the priorities that had evolved over the years, the accounts department had become a "paper-work" department without any authority to control operations or insist on accountability.

Monitoring would be required at three important levels.

At the scheme level, there was a total absence of organised reporting. For example, there were no summarised statement of expenses against an advance. Expenses were "accounted" by handing over a bundle of bills to the accounts department which had to total them up and balance the amount against the advance.

At the programme level, programme managers would sign vouchers without any supporting bills. In both these areas, information concerning expenditure would frequently be accepted without verification.

The inadequacies of the scheme level and programme level reporting were obviously reflected at the donor agency reporting level. With the best will in the world, much of the information

that was passed to donors was unauthentic and were perhaps not queried only due to the high regard in which Father Murphy was held by donor representatives.

Accounts Management

Since there were no clearly defined expenditure authorisation limits, the Project Director's time would be taken up by decisions on minor expenses. This affected the overall management efficiency of the organisation. There was no budget discipline, and expenses were incurred as needs arose. Since development agencies are expected to respond quickly to situations of extreme distress, deprivation, disability or disaster, all attempts at budget discipline had failed as a hindrance to good development work. Most schemes suffered from over spending and negative balances. Funds would be transferred across schemes and donor accounts, resulting in considerable confusion.

The Proposed System

Through a long-drawn-out process which included the induction of a professional manager, the project agreed to move towards a new system, supported by computerised accounting. Computerisation was initially thought to be an undesirable innovation in a development project. Over a period, the functional advantages of computerisation were recognised by Father Murphy. The computer could provide donor agency Income and Expenditure Statements and Receipt and Payment Statements with great speed and accuracy. Programme and scheme level reports could be generated with ease at any time. Statements of accounts could be consolidated and prepared with very little manual intervention. Probably most important, computerisation imposed standardisation across the various departments, each of which had it's own quaint and original system. Assessing and auditing the financial status of the organisation now became much simpler and faster. In the new system, several rules and regulations were introduced. An advance would have to be settled within a pre-defined period before another advance could be taken.

Reporting began at the activity level, which led to the scheme level. The consolidation of several schemes made up the programme level reports. At the highest level, the consolidation of programme level reports provided the SIP organisation reporting across donors, programmes and activities.

Transfer of funds across schemes was discouraged and budgeting discipline was enforced. Wherever central resources were shared by several schemes, the costs were allocated to the schemes on the basis of estimated proportions. The next logical step was the internalisation of budget discipline.

Since the newly inducted Assistant Director was trained and skilled in management, annual budgeting became an important outcome of mission and programme planning. The annual budget itself became the apex of a hierarchy of consolidation of scheme level budgets and programme level budgets.



Since expenditure began to be monitored against budgets, responsibility for the administration of expenditure was delegated to the appropriate level. Programme performance and budget performance thus became the responsibility of the scheme or programme head. Inter-departmental meetings began to be organised on a monthly basis to monitor performance against plans in an open forum, and offer corrective advice where there were undesirable departures from plans. Such meetings introduced a sense of competition and achievement in a transparent environment.

Concluding Remarks

At the time of making this presentation, the entire accounting procedure of SIP is being computerised. There have been several bugs in the system, which are to be expected. A computer package was developed to deal with the complex reporting requirements of the project.

Although there are still one or two staff members who insist that their annual programme and budget cannot be estimated in advance, and refuse to acknowledge accountability for funds, the tide has changed, and SIP is moving towards a fully modernised management and financial accounting system.

SECTION IV

ACCOUNTS, AUDIT AND TAX MANAGEMENT



RESPONSIBLE ACCOUNTING WITH REFERENCE TO VOLUNTARY ORGANISATIONS

T. Ramesh

Donors of funds to Voluntary Organisations have a right to expect that the funds they contribute are used for achieving the specified objectives. This calls for the installation and maintenance of standard accounting systems. This essentially means good systems of cash and credit management. Cash management involves physical handling of cash, incurring authorised expenses and their recording in the books, planning for and obtaining resources and budgeting. Asset Management covers the planning for an asset and its authorized acquisition, its operation and maintenance and recording the relevant transactions in the books. Internal controls help in ensuring that sound accounting practices are followed in every transaction: they will also inspire confidence in the donors.

Introduction

The words "Voluntary Organisation" literally mean an organisation voluntarily formed. In a way every organisation comes into existence voluntarily, but voluntary agencies or organisations mean bodies formed with a spirit of service to the masses. This kind of voluntary service is found in historic times in the presence of choultries, common eating houses, horse care centres, etc. In those good old days these were the prerogative of kings and a few rich men with a voluntary spirit. With time monarchies and kingdoms have given way to governments and political parties. These political changes have brought in a metamorphoses in the thinking on voluntary organisations. Successive governments brought in legislative measures in incorporating voluntary agencies and thus came into existence the Societies Registration Act, Co-operative Societies Act, etc., to administer these bodies. The basic feature of the present day societies is that they are meant for the common man.

Voluntary agencies are supported by grants from governments, charitable bodies (donor agencies) and individual contributions from affluent people/persons in the society. Often Government grants are delayed, project sanctions and disbursements are delayed and general contributions are uncertain in quantum. However, the common feature of all the donors is that they expect voluntary organisations to give the best of results in achieving their objectives. If the desired objective is not obtained in time criticism follows. If the beneficiary's expectations are not met criticism follows. If strict discipline is imposed employees' criticism follows. It is obvious that voluntary agencies carry multiple responsibilities.

It is observed that whenever any voluntary agency works under intimidating conditions, the emphasis on proper accounting tends to get sidelined. Meticulous adherence to strict accounting standards is not done as the attention of managerial talent gets diverted into day-to-day crisis management. What is important to be realized is that if accounts are improperly maintained, the organisation is solely to be blamed as internal controls are not in place. A good accounting system is a *sine qua non* for efficiency.



Responsible Accounting

Responsible accounting keeps in mind the organisation's responsibility to its funders, beneficiaries, employees, general public and the government. At the same time an organisation has to follow accounting principles and has to comply with the requirements of the law. Voluntary organisations must realise that they are dealing with public money and are responsible to everyone.

Good Accounting System

A good accounting system is one which properly and correctly records all its income and expenditure keeping in view the accounting standards. A good accounting system has built in internal controls that ensure the use of money rightfully for just purposes and ensures correct recording of the transactions. This implies:

- 1. Recording of each and every receipt of money.
- 2. Recording of each and every expenditure concerning the organisation
- 3. Accounting for all the assets acquired and liabilities incurred.
- 4. Safeguarding the assets for proper use by the organisation.

In this context every organisation must ensure the existence of certain systems. These systems broadly revolve around:

- I. Cash management
- II. Asset management

I. Cash management

Cash management basically means a system for ensuring the recording of all incomes and expenses of the society in a rightful manner; this is further split into:

- a) Physical handling of cash and its custody.
- b) Incurring expenses and the necessary authority for the same.
- c) Planning the needs and augmenting its resources.
- d) Budget preparation and follow up.
- a) Physical handling of cash:

Voluntary organisations usually work in rural areas and their controlling office is in a nearby town or district. Offices usually maintain a bank account and funds are drawn as per needs and disbursements made for expenses. In this process the need for holding physical cash balance

and its requirement must be carefully planned and excess holding of cash balance must be avoided. This prevents loss by theft and also cuts down unwanted expenditure. Secondly excess holding of cash balance may result in advancing money as loans, which may become bad and irrecoverable. Expenditure should be incurred as per plan and sanctioned budget. Though budgets provide for variations, these must be kept at a minimum. Major variations and overexpenditures indicate that the budget has not been well-prepared. Expenditure incurred must pass through the following phases to ensure proper handling of cash:

- 1. Project co-ordinator verifies and informs the concerned person about the expenditure to be incurred (from the budget)
- 2. Worker at field level incurs the expenditure from out of the amounts sanctioned for this purpose.
- 3. Person incurring the expenditure collects the evidence of incurring the expenditure, preserves and hands it over to the co-ordinator.
- 4. Co-ordinator verifies and approves the same and passes it on to the cashier.
- 5. Cashier records the expenditure in the cash book and adjusts the balances, prepares the voucher, and, gets it passed by any designated officer.
- 6. Ledger-keeper posts it into the ledger and the subsidiary registers.

The above flow chart suggests that the work force involved for recording a transaction are:

- a) Field-level worker
- b) Co-ordinator
- c) Cashier
- d) Accountant
- e) Executive

In the above set-up, the persons involved act jointly as custodians/guardians of cash and in this process work done by one is automatically checked by others.

b) Incurring expenses and necessary authority for the same:

Sanction of funds to any project is accompanied by a host of conditions. These terms and conditions are a proof of our responsibility to them. Hence utmost care should be taken in this part of financial management.

In an ideal situation the organisation employs the following persons:

- a) Chief functionary/executive
- b) Project in-charge



- c) Project co-ordinator
- d) Field-level operator
- e) Cashier and Accountant

Expenditures pertaining to a project must be spent with the knowledge of the chief functionary or a person authorised on his behalf. Since the amount is spent at the field level necessary evidence must be collected and handed over to the cash department. This responsibility must be spread as much as possible. By involving the field staff in all the stages of the project i.e., conception, preparation and implementation, they will understand their responsibility better. Variations in budget can be best controlled when the persons connected are in the full knowledge of the same.

c) Planning the needs and augmenting the resources:

The organisation must plan ahead its financial needs, manpower, infrastructure, etc.. It must also be in a position to estimate its strengths and weaknesses. Activities may not necessarily go according to the planned time frame. An organisation must ensure that respective funds for the project are in hand and in case a grant is released in instalments, it should be used according to schedule.

d) Budget preparation and follow-up:

This forms a part of financial management. It is relevant to mention a few important aspects which have a bearing on the internal controls of an organisation. The budget should be prepared keeping in view all the components of project i.e., fixed expenses both recurring and non-recurring, establishment expenses and other direct project expenses. The competence of the voluntary agency lies in forecasting the budget nearest to the actual. Shifting of expenses from one head to another causes confusion and mistrust.

Establishment costs must be carefully estimated, planned and incorporated in the budget. The final budget must not give rise to overexpenditure in project cost at the time of implementation. In this process of budget preparation, one must not forget the need to follow-up on the budget.

II. Asset management

Assets held by any organisation are principally of two types.

- a) Fixed Assets
- b) Other Assets
- a) Fixed Assets:

The following class of assets are classified as fixed assets

- 1) Land and building
- 2) Furniture and fixtures

- 3) Vehicles
- 4) Machinery and equipment
- 5) Office equipment
- 6) Training Equipment
- 7) Other value-realisable assets

b) Other Assets

Under the category of other assets generally miscellaneous assets, such as: crockery and cutlery, linen etc., will be included. Donor agencies generally do not agree for a permanent accommodation; instead, they prefer activities from rented premises. When land and buildings are financed, funding agencies clearly spell out the purpose for which their building should be used. As far as asset management is concerned the important points to be noted are:

- 1) custody of the asset.
- 2) use to which it is being put.
- 3) timely maintenance and repair of the asset.
- 4) proper and just liquidation of the asset.

Organisations must ensure that all assets are in the custody of responsible persons and their existence should be verified from time to time. Assets requiring frequent maintenance must be serviced or repaired at convenient regular intervals, e.g., assets like four - and two-wheelers. A logbook containing details of journey, distance, person(s) travelled, purpose, fuel consumed, due dates for servicing, renewal of licenses etc., has to be kept. Having excessive assets in possession leads to misutilisation and an increased infrastructural expenditure component.

Similarly, the use of assets for personal purposes should be eliminated as far as possible. Repairs to assets and maintenance must be on a timely pattern, duly authorised by an executive. Periodical checking of fuel consumption for vehicles and timely corrective measures to eliminate draining away of funds and wastage would be necessary.

It is recommended for organisations that they should maintain an assets register. This must contain particulars about date of purchase of an asset, its value, taxes paid, renewal dates if any for insurance, depreciation provided up to date, important servicing dates, warranty period if any and lastly, where it is located. If it is sold, consideration, authorization, reasons for selling it etc., must be recorded in the register. All significant asset purchases and disposals must be passed by the governing body or at least, must be ratified by that body. Voluntary agencies often feel that these scientific measures cost very heavily in terms of manpower, which has the effect of increasing the overhead cost eventually. All such arguments are not supported by the donors. Donors feel that their contribution should be to the field operations mostly and as little as possible for establishment. Voluntary organisations are vulnerable. They are visible to the outside world and the smallest mistake is magnified and can lead to bad publicity. In a hostile environment of possible criticism from every side, internal control helps in refuting these criticisms and leads to effective project management.

The advantages of internal controls are:

- 1) They avoid wastage.
- 2) They ensure correct and complete recording of entries in the books.
- 3) They ensure safety of assets.
- 4) They ensure timely action in respect of liabilities.
- 5) They improve the confidence reposed in the organisation.

In reality, maintaining internal controls is not as costly an exercise as it appears. It is a question of distribution of responsibilities among the existing staff. When donor agencies limit their grants to the project components other than administrative costs, it becomes difficult to have the staff for the sake of internal controls. Constant dialogue between project partners and their donor agencies on the need for the improvement of monitoring systems within the organisation are needed to achieve greater continuity in the work done by the voluntary sector.

INTI DEEPAM: A CASE STUDY ON ACCOUNTING STRUCTURE FOR A THRIFT AND CREDIT PROGRAMME

M. Anand Kumar

Inti Deepam is an accounting system friendly to the village-level workers and cluster coordinators. This system is specifically designed for savings and loans transactions at the village/cluster level. At the village level, four simple accounting records, namely, collection and disbursal statement, village cash summary, members savings and loans registers and individual savings pass books are maintained. At higher levels, the accounts of several such villages are consolidated by maintaining cash books, general ledger, subsidiary savings and loan registers, savings and loan balancing books and multipurpose workers advance register. The functions and formats of these books/records are given in detail. To facilitate possible computerisation, a seven digit code is proposed, incorporating village code, group code and member code. The methods of making entries in the books, striking balances and checking against control accounts are described. For calculation of interest, the use of ready reckoners is recommended. Multipurpose workers who normally maintain and operate the accounting system at the village level can also be trained to work at higher levels. Where there are 3000 savings accounts and between 600 to 1000 loan accounts, computerisation right from the beginning is recommended.

Introduction

Accounting is one of the main factors determining the success of any rural development programme of a financial type and especially a thrift and credit programme which involves a large volume of individual savings and loans. The lack of availability of qualified and experienced accounting staff at the village levels and also at the apex level has to be kept in mind. The accounting structure of the programme should be such that maximum stress should be given to accounting principles and availability of information without the need for highly qualified accountants. The proposed accounting structure for the Inti Deepam Programme has been designed keeping in mind these prime factors. The accounting system is very simple and can be easily understood by the multipurpose workers and cluster organisers who would also combine as accountants at the village or sangha level. This eliminates the need for a separate accountant at the village level. Even at the federation office one or two multipurpose workers could be trained to perform the accounting function. To determine whether this was a workable solution to the problem of non-availability of trained accountants, at a workshop conducted for Inti Deepam field staff, the proposed accounting structure was explained and a proforma of the records to be maintained was also shown to the field workers. They were given assignments to write up sample accounts. The outcome of this test was satisfactory. Even the staff of the federation office were taught how to write up a cash book and a ledger and they were given the task of writing up the accounts of the start-up period in a proper fashion as against the memorandum registers which were maintained. The results of this test were also satisfactory. In addition the project manager of the Inti Deepam Programme was also trained

to maintain the cash book and ledger. After due deliberations and discussions with the field workers and Gram Management Team the proposed accounting structure has been finalised as most suitable for the programme.

Medium of Accounting

To ensure that language barriers do not create a hurdle to proper accounting and also keeping in mind that qualified and experienced accountants would not be available it has been decided that the accounts would be maintained in Telugu language and script. This would also create confidence in the target groups and the various levels of managing committees of the programme. It is not known whether any interface is available to convert existing computerised database programmes into Telugu. Enquiries have been made in this regard. Even if available the suitability and the capability of the software has to be thoroughly tested. In the meanwhile the parallel computerised accounts can be maintained in English. The program can be developed internally by the Gram with some initial help and program design by a consultant.

Accounting Personnel

As already stated the multipurpose workers would perform the role of the accountant at the village level. This is on account of the level of literacy at the village level and also to ensure that only women play the support role in the programme. Even at the federation level the role of accountants would be performed by the same level of staff namely multipurpose workers. It is suggested that the federation accountants should be on a rotation basis so that all the multipurpose workers get a chance to maintain accounts.

Codification of Members

To serve the dual purpose of facilitating computerisation and also to take care of the problem of common names being repeated in individual villages and also in all villages, it has been decided to allot membership codes to all the 3000 members. For this purpose it has been decided that a seven-digit code structure would be more suitable. The subdivision of the seven digits would be as follows:

Village Code 3 digits
 Group code 2 digits
 Member code 2 digits

A three-digit village code provides the maximum number of coding combinations to ensure that there is no possibility of repetition in village codes. It also takes care of future expansion of village membership at optimum levels. A two-digit group code has been decided since there is a definite certainty that there would be more than 9 groups in a village and at the same time the number of groups would not in any case exceed 99. The same logic has been used in allotting 2 digit to the member code since there would be more than 9 members in the group but the strength of the group would not exceed 99.

The entire 7 digit code would be the unique identification code for each of the 3000 members and the passbook of the members would bear the same code. The field workers were explained this code structure and were given test assignments in allotting code numbers to the members of the programme. The result of this exercise was extremely satisfactory. The cluster organisers are at present allotting "7 digit codes" to the 2500 members who have joined the Inti Deepam programme.

Levels of Accounting

Accounts would initially be maintained at two levels namely the sangha or village level and the federation level. Later in case the volume of accounting considerably increases one more intermediary accounting level can be introduced namely the Mandal Level.

Village Accounting

At the village level the least number of books or statements would be maintained so that the accounting function is not complicated beyond the understanding of the villagers and is easy for the multipurpose workers to maintain. At the same time they would provide the maximum information required at the village level. The village level accounts would comprise the following

- 1. Collection and Disbursal statement
- 2. Village Cash Book
- 3. Members Savings and Loan Registers
- 4. Individual Savings-cum-Loans Pass Books.
- 1. Collection and Disbursal Statement

This statement would be the basic document from which both the village accounts and the federation accounts would be maintained. The statement would be a computerised statement with membership codes and names of the members already computer printed on it to ensure that minimum effort has to be put in by the multipurpose worker and to avoid a mix up of member's names. This statement would be in duplicate and one copy would be kept at the village. The other copy would be handed over at the federation office based on which entries would be passed in the main books of accounts. Even if there is no cash balance handed over to the multipurpose worker and the entire collections are disbursed at the village itself, this statement would be prepared and handed over to the federation office. The proforma of the Collection and Disbursal statement is given in annexure 1.

2. Village Cash Book

The village cash book is a consolidation of the collection and disbursal statement discussed earlier. The totals of the collection and disbursal statement would be reflected in this book against the respective heads. The proforma of the Village Cash Book is given in annexure 2.

3. Village Members Savings and Loans Register

A separate register would be used for savings and loans. In the case of savings the register would have columns against the name of each member to record the monthly savings of the member for each month of the year and the interest credited half yearly. The loans register would record the details of the loans disbursed to the member, interest charged monthly and the repayments made by the member in the year. The proformas of these registers would be as per annexures 3 and 4.

4. Village Members Savings-cum-Loans Pass Book

Each member would be issued with a Savings-cum-Loans Pass Book. The pass book would contain the descriptive particulars of the individual member such as code, name, husband's/father's name, age, occupation, name of nominee and would also have a provision for affixing the photograph of the member. The first half of the pass book would have columns to record the month-wise savings of the member and the second half would have provision to record the particulars of the loan disbursements and the repayments. The proforma of the pass book would be as per annexure 5.

Methods of Accounting

On each visit, the multipurpose worker would collect the members savings and loan repayments and issue receipts for the same. Simultaneous entries would be recorded in the collection and disbursal statement against the members' names. Then the loan disbursals would take place and vouchers collected. These would also be recorded in the statement under the disbursals column. Entries would then be recorded in the members' pass books and the members' savings and loans registers. The totals of the collection and disbursal statement would also be recorded in the Village Cash Book. The Collection and Disbursal statements would be handed over to the federation office for accounting.

Federation Accounting

The following Books of Accounts would be maintained at the Federation Office.

- 1. Cash Book with Cash and Bank Columns.
- 2. General Ledger
- 3. Subsidiary Savings and Loan Registers
- 4. Savings and Loan Balancing Books
- 5. Multipurpose Workers Advance Register.

1. Cash Book

The cash book has been designed with cash and bank columns; with further subdivisions for savings, interest and loan columns under the control accounts column on both the sides. The totals of the collection and disbursal statements would be entered both in the amount column of the receipts and payments side of the cash books well as under the respective loans and savings column on each side. Deposits in the bank, if any, of the surplus cash brought from the village (generally this will not be the case) would be done on a contract basis in the cash and bank columns. Withdrawal of cash from the bank would also be accounted in the same fashion. The proforma of the cash book is as per annexure 6. Entries would first be passed in the rough cash book each day and after tallying the cash balance at the close of the day the main cash book would be written up.

2. General Ledger

A three column ledger with Debit, Credit and Balance columns has been designed in the proforma given in annexure 7. The ledger would have provision for Control Accounts as follows and would be supported by subsidiary ledgers for individual transactions.

- a. Savings Control Account
- b. Loans Control Account
- c. Interest Received Control Account
- d. Interest Paid Control Account
- e. Multipurpose Workers Advance Control Account
- f. Fixed Deposits Account

The Savings Control Accounts and Loan Account would be maintained cluster-wise.

3. Subsidiary Savings and Loans Register

These Registers would be a replica of the Village Savings Register and Loans Registers. Separate Savings Registers and Loan Registers would be maintained cluster-wise. The Registers would have indexes to record the names of villages in the cluster.

4. Savings and Loan Balance Books

These would be ordinary registers with three columns for membership numbers, members' name and amounts. They would act as the link between the savings and loans control accounts in the general ledger and the individual accounts in the subsidiary registers. Each cluster subsidiary register, savings or loans would have its own distinct balance book. The balances from the members savings and loan subsidiaries would be entered in the balance book against the members name each month. The total of the savings or loans each month should tally with



the balance in the respective control account in the general ledger. This pattern has been adopted based on the system followed in commercial banks to minimise occurrence of mistakes and for easy detection thereof.

5. Multipurpose Workers Advances Subsidiary Register

In case of deficits in villages for loan disbursals as compared to collections, the shortfall has to be drawn from the bank at the federation office and disbursed by the multipurpose worker on her next visit. In such a case the amount drawn will be handed over to the multipurpose worker, after debit to her advances account in the advances column of the cash book and her individual account in the advances register. After disbursal of the loans on her next visit she submits the collection and disbursal statement in respect of the disbursal along with the vouchers collected from the villagers and after these are checked and verified for accuracy, the advance entry would be reversed. The advances register would act as a subsidiary to the advances control account in the general ledger.

Methods of Accounting

As already mentioned, the totals of the respective columns in the collection and disbursal statement submitted by the multipurpose worker after each visit would be recorded in the amounts column of the cash book on the receipts or payments side, as the case may be, as well as in the respective savings, loans or advances extension columns. Then entries would also be passed based on the same collection statement to the savings and loans subsidiary registers. The totals of the extension columns on a monthly basis would be posted on a monthly basis would be posted to the respective control accounts in the general ledger. At the end of each month, the balances in the various subsidiary registers would be recorded in the respective balance books and the totals of the balance books should tally with the respective cluster-wise control accounts in the general ledger. The entire system would be on self-balancing basis as followed in banks which minimises the possibility of errors and enables detection thereof.

Interest on Loans

To enable simple calculation of interest an interest-ready-reckoner card would be provided to the multipurpose workers. A proforma interest card is presented in annexure 8. The multipurpose worker would pay a visit to the village sangham before the date of the meeting and calculate the interest based on the balances and enter the same in the village loans register and the members pass book. The multipurpose worker should also note the calculations on a separate statement for accounting at the federation office.

Quantum of Loans

It is recommended that the loan amounts should be in round figures of fifties or hundreds to enable simplicity of calculation of interest.

Computerisation of Accounts

As an effective back up in case of failure of the manual system of accounting on account of unforeseen contingencies and also since a large volume of around 3000 savings accounts and 600 to 1000 loan accounts have to be maintained, it is recommended that the accounts be computerised right from the beginning. A separate computer can be provided as part of the infrastructural assistance to the programme or in the alternative the existing computer at Gram Office can be used for the purpose. The software for this can easily be developed using dBase or Foxbase. The program design, file structure and flow chart can be developed with the help of an outside software house and once the flow chart is done, the program can be written up by the Gram Programmer. This would enable Gram to have the source code which will give it independence in case of future modification of the program or maintenance of the software without having to depend on any outside agency. From discussions with other agencies who have carried out similar programs, it is found that one of the major drawbacks experienced by them is accounting and therefore to prevent this computerisation is recommended right from the inception since it is within the present infrastructural and software development means of the Gram.

	(ON	DISBURSALS	LOAN DISBURSAL	IO. AMOUNT						
	DATE	STMT. NO	D	T	VCHR. NO.						
				EST	AMOUNT						
	MENT			INTEREST	RECPT.NO.						
	COLLECTION/DISBURSAL STATEMENT			LOAN REPAYMENTS	AMOUNT						
nent	DISBURSA		ONS	LOAN REP	PECPT. NO.						
rsal Staten	ECTION/		COLLECTIONS	SAVINGS	AMOUNT						
ction/Disbu	COLI			SAV	RECPT.NO						
E 1 Proforma of Collection/Disbursal Statement	VAME:	CODE:		MEMBER'S NAME							
ANNEXURE 1	VILLAGE NAME:	VILLAGE CODE:		MEMBER'S	CODE.						

ANNEXURE 2 Proforma of Village Cash Book

VILLAGE CODE:

NO OF MEMBERS:

VILLAGE CASH Book

DATE

STMT NO

	AMOUNT												
PAYMENTS	PARTICULARS	Savings Repayments	Loan Disbursals	Transfer to Federation Office	Expenses (Specify)					0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	Total:	Closing Balance :	Grand Total :
	S.NO.	1.	2	<u>ښ</u>	4.								
	AMOUNT												
PECEIPTS	PARTICULARS	Savings from Members	Loan Instalments from Members	Late fee from Members	Membership fee Collected	CCR Receipts	Grants	Other Receipts (Specify)			Total:	Opening Balance:	Grand Total:
	S.NO	1:	2	ů,	4,	5.	.9	7.					

Multi Purpose Worker

President Secretary

Inte rest 12 VILLAGE SAVINGS REGISTER 11 10 9 MONTHLY SAVINGS 00 7 Inte | Total rest 9 Proforma of Village Savings Register 5 3 GRAND TOTAL Member's Name VILLAGE NAME: VILLAGE CODE: ANNEXURE 3 Members's Code.

Total

ANNEXURE 4 Proforma of Villa

Proforma of Village Loans Register

VILLAGE NAME:

		Bal-					1	T
	4	Instal- ment						
TER		Inte- rest						
GGIST		Bal- ance						
VS RE	3	Instal- ment						
LOAL		Inte- rest						
AGE		Bal- ance						
VILLAGE LOANS REGISTER	2	Instal- ment						
		Inte- rest						
		Bal- ance						
	1	Instal- ment						
		Inte- rest						
		Loan						
ODE:		Member's Name						GRAND TOTAL
VILLAGE CODE:		Members's Code.						

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ANNEXURE 5 Profe

Proforma of Member's Savings cum Loan Pass Book

A. Cover Page

1. Member's Name	SAVINGS CUM		
1. Member's Name		SAVINGS CUM LOAN PASS BOOK	
2 Age		Village Code . :	
p	••	Members Code :	
3. Sangha Name			
4. Date of Joining	• •		
5. Occupation	• •	Passport	
6. Nominee's Name	• •	Photograph	
7. Nominee's Age	• •		
8. Nominee's Relationship	· di		
9. Address	••		

B. Savings Account

Loan Purpo Intere	Date	-	
Signature 5.			
Savings Balance Credited 3. 4.			
Savings Credited			
Particulars			
Date 1.			

C. Loan Account

lars	Amount of Instalment : Instalment Due on :	Instalment Balance Signaure Paid	5 6 7	
Loan Particulars	¥		4	
1		Principal Interest Total	3	
	mount	Principal	2	
	Loan Amount Purpose Interest	Date	1	

ANNEXURE 6

Proforma of Federation Cash Book

Month:

Receipts:

Cash Book

Payments

	Oth	
Control A/C	Inte rest	
Contr	Loans	
	Sav	
ount	Bank	
Amount	Cash	
	Faruculars	
	E	
	Date	
	Oth	
I A/C	Inte	
Control A/C	Loans	
	Sav	
	Bank	
Amount	Cash	
	L.F.	
	I alticulats	
	Cate	

ANNEXURE 7 Proforma of Federation General Ledger

GENERAL LEDGER

ACCOUNT HEAD:

	Balance	
Amount	Credit	
	Debit	
	L.F.	
	Particulars	
	Date	

ANNEXURE 8 Proforma of Interest Card

INTEREST CALCULATOR

Interest Rate: 24% p.a.

						_			_		_
	12	24	48	72	96	120	144	168	192	216	240
	11	22	44	99	∞ ∞ ∞	110	132	154	176	198	220
	10	20	40	09	80	100	120	140	160	180	200
	6	18	36	54	72	06	108	126	144	162	180
ONTHS	∞	16	32	48	64	80	96	112	128	144	160
OD (M	7	14	28	42	56	70	84	86	112	126	140
REPAYMENT PERIOD (MONTHS)	9	12	24	36	48	09	72	84	96	108	120
YMENT	5	10	20	30	40	50	09	70	80	06	100
REPA	4	∞	16	24	32	40	48	56	64	72	80
	က	6	12	18	24	30	36	42	48	54	09
	2	4	∞	12	16	20	24	28	32	36	40
	1	2	4	9	∞	10	12	14	16	18	20
		100	200	300	400	200	009	700	800	006	1000



STATUTORY ACCOUNTING REQUIREMENTS FOR NON-GOVERNMENTAL ORGANISATIONS

K. Shivakumar

Foreign contributions are governed by the provisions of the Foreign Contribution (Regulation) Act, 1976 usually referred to as FCRA. Details of various types of records to be maintained under that Act are described. The interplay of the Societies Registration Act, the Income-Tax Act and the FCRA, so far as the voluntary organisations are concerned, are summarized. Also, the wide-ranging punitive powers that can be assumed by the authorities under these Acts are mentioned.

Introduction

All NGOs receiving funds from external sources and incorporated as registered bodies have to comply with certain accounting procedures. These are laid down in the respective laws that govern them. Some of the requirements are enumerated in this paper.

Section 13 of the Foreign Contribution (Regulation) Act stipulates some of the requirements under the Act. It says that we have to maintain records in "such" form and in such manner which should satisfy the authorities regarding the receipt and utilization of funds.

This section has not defined what are "such" forms and manners. However it is clear that records have to be maintained in such a manner that the records reveal for themselves that money has been utilized for the purpose for which it has been received. To achieve this objective the following records are considered essential:

1. Receipt Books for receipt of funds: A separate receipt book for receipt of funds under FCRA, another separate receipt book for receipt of funds under corpus donations and a third receipt book for receipt of local funds are considered necessary.

Corpus donations are funds received towards the corpus fund of an organisation. Corpus fund is meant to be of a permanent nature and it is created to build a capital base for an organisation. Such funds cannot be utilized for revenue expenditure. A donation cannot be applied towards the corpus fund unless it is specified by the donor as a donation meant for the corpus fund of the organisation. Surplus in revenue account should not be transferred to the corpus fund account. The interest out of the corpus fund may be utilized for the objectives of the Trust.

A minimum of two bank accounts are considered essential-one for funds received under Foreign Contribution Regulation Act and another for funds received under corpus donations. There is no restriction on the number of bank accounts that can be opened under local funds.

2. A cash book with a bank column, a ledger and a journal book are also required to be maintained. These should be supported by receipt books, cash and bank vouchers and journal vouchers.

Maintenance of vouchers

According to the Societies Registration Act all vouchers are to be approved by the director or the secretary. The FCRA contemplates by the words "such" books and records, the books and records necessary to show that funds have been utilized for the purpose for which they have been received. This also means that maintenance of vouchers by itself does not constitute sufficient evidence of proper utilization of funds received. In addition, it is necessary to produce proper and sufficient evidence in support of each payment made. This in turn could be in the form of bills or in the form of photographs, legal papers in the case of legal expenses etc., attached to vouchers. e.g., A voucher which just says that Rs.5,000/- is paid to a person with a name specified on it on account of a certain expenditure item is not conclusive proof that the payment is made to that person for that purpose. Every voucher will have to pass through three persons when the payment is made. One person who prepares the voucher, another who approves it and another who signs for receipt of the money. All the three jobs should not be done by the same person. Formats of payment voucher, a stock register maintained at the field office and a cheque/draft receipt register are shown at the end of this paper. (Refer Annexures 1,2,3 and 4). In the absence of proper evidence the inspecting authorities can take a stand that the funds have not been utilized for the purpose for which they have been received. This could also lead to revocation of the FCRA registration granted.

Maintenance of Registers

Apart from these main books there are a certain number of registers that are required to be maintained. These have been listed at the end of this paper.

Maintenance of various registers gives a bird's eye view of the transactions pertaining to a specific head of account during a year or more. It also helps to control transactions and to assess the movement of a particular head of account, for example, a travel advance register contains employees details of advance paid for travel, the date of advance given to a particular employee with amount. When the employee settles the advance the date on which it was settled and amount for which it was settled and the balance received if any will also be entered. All these entries will be supported by the corresponding cash/bank payment Voucher No., the Journal Voucher No. and the Cash Receipt No.. This helps to ascertain whether employees are settling their travel advance in time or not. Travel Advances not settled over a long period of time will also get reflected.

Registers also help to show the inspecting authorities the direction which the money is flowing. They provide additional support to the evidence with the payment vouchers. For example, medicines bought are entered through a payment voucher and then a Medicine Register is maintained to keep track of the utilization and distribution of medicines. This register if maintained properly will establish the fact that medicines were bought and distributed and hence clearly reveal the manner of utilization; hence the importance of maintaining registers.

Other Requirements

Another legal requirement under the Income Tax Act is that all payments above Rs.10,000/- should be made only by a crossed cheque or a crossed demand draft. This in effect means that payments in cash can be made only up to Rs.10,000/- to a party. This has been introduced to minimize transactions in cash.

Organisations that receive foreign contributions are regulated under the FCRA. If they are registered as societies then they are also regulated by the Societies Registration Act which do not differ very much from State to State. They also have to register themselves under Section 12A of the Income-Tax Act if their objectives are charitable in nature. In such a case they are governed by the provisions of the Income-Tax Act. These Acts are not contradictory but complementary. All these Acts have one thing in common. They are regulatory in nature and they control the organisations effectively from a distance. However, any person who violates any of the Acts is liable for severe punishment. e.g., under the FCRA, if the Government suspects that any association receiving foreign funds has contravened the Act, they can authorize the specified officer to inspect any account or record maintained by the association and they have a right to enter the premises for inspecting the books at any reasonable hour before sunset and after sunrise. The authorized officer may also seize such accounts and records and produce them before the court.

If the organisation or the association fails to furnish the returns, or if the returns furnished are not in accordance with the law, and if the Government feels that the organisation has violated the law, the Government may also order the specified officer to audit the books of accounts.

The Government can also seize any article or currency which is received or obtained in contravention of the Act, in addition to the penalty. But the adjudication and confiscation should be made only after giving a reasonable opportunity. There are also the usual courses of appeal for the aggrieved persons.

Similarly, Section 13 of the Income-Tax Act has specified that the institution will not be entitled to the benefit of exemption under Section 11 in case the income or property of the trust has been used directly or indirectly for the benefit of certain interested persons as defined under Section 13 (3). Hence the organisation may lose the benefit of exemption from Income-Tax granted to it under Section 11 if the Income-Tax Officer feels that it has violated any of the clauses specified under Section 13 (2) & 13 (3).

Books and Registers to be maintained;

Cash Book with Bank column (on Daily Basis)

Ledger

Journal Books

Supported by

- Receipt Books
- Cash/Bank Vouchers
- Journal Vouchers

Hivos

Registers:

- 1. Fixed Assets Registers
- 2. Register of Advances, Loans, and Revolving Fund
- 3. Register for Travel Advance
- 4. Register for Medicines
- 5. Register for Stationary
- 6. Register for Trainings conducted
- 7. Register for Outstation Calls
- 8. Log Books for Vehicles
- 9. Register for Investments
- 10. Salary Register
- 11. Cheque/draft receipt Register

STATUTORY REQUIREMENTS OF PROJECTS

FCRA	Income Tax Act	Societies Registration Act	Other Laws
a. FC.3 & FC6 returns.	a. Registration 12A (a). b. Annual Return c. It is essential more than 75% of the receipt is utilised within the year. If not Form No. 10 to be filed for carry forward. d. Form No. 10G to be filed for 80G exemption.	a. Annual Return Financial Statement b. Changes in the members/office bearers.	 PROVIDENT FUND ACT Fifty or more persons employed after 3 years. Twenty or fifty persons. GRATUITY ACT Ten or more persons employed. Minimum 5 years of services. PAYMENT OF BONUS ACT Factory under Factories Act and/or Establishment employing twenty or more persons. Employees not covered like Red Cross Society or Institution of like nature. FACTORIES ACT Income Generating Project.

DEVELOPMENT CELL-ASW: GANDHIGRAM

Project Title

Voucher No.

Date

PAYMENT VOUCHER

DEBIT :	Head of A/c	
CREDIT:	Cash A/c. Bank A/c. Cheque No.	Amount Rs. Ps
Amount (in words	s)	
Prepared by	Approved by	Payment received by Signature

Essential of Voucher:

- 1. Recipient should sign on the voucher
- 2. Approval from authorised person is essential
- 3. Head of A/c. and Sub Head should be clearly indicated
- 4. Should have a serial number if possible

STORES STOCK REGISTER MAINTAINED AT HEAD OFFICE

- 1. Fertilizers, Seeds, etc.,
- 2. Medicines
- 3. Stationery
- 4. Any other items Kind

			Receipts		Issues/Distribution				Signature		
Date	Particul- cars	Unit Cost	Amount Rs. Ps	Qty	Unit Cost	Amount Rs. Ps	Qty	Unit Cost	Amount Rs. Ps	Qty	for Issues

Annexure - 3

STORES - STOCK SUB REGISTER MAINTAINED AT FIELD OFFICES

NAME OF THE ITEMS

Date Particul-		Receipts		Issues/Distribution			Balance			Signature of the
cars	Unit Cost	Amount Rs. Ps	Qty	Unit Cost	Amount Rs. Ps	Qty	Unit Cost	Amount Rs. Ps	I OIV I	who
	Particul- cars	Particul- cars Unit	Particul- cars Unit Amount	Particul- cars Unit Amount Oty	Particul- cars Unit Amount Oty Unit	Particul- cars Unit Amount Oty Unit Amount	Particul- cars Unit Amount Oty Unit Amount Oty	Particul- cars Unit Amount Oty Unit Amount Oty Unit	Particul- cars Unit Amount Oty Unit Amount Oty Unit Amount	Particul- cars Unit Amount Oty Unit Amount Oty Unit Amount Qty

MAIN STOCK REGISTER IN THE HEAD QUARTERS:

- 1. All medicines purchased should be entered in the receipt column with details of voucher number etc.
- 2. If medicines are received free it should be indicated.
- 3. Each medicine will be entered in separate folio.
- 4. The field staff has to sign the main register at the time of taking delivery of medicine.
- 5. The Project Director/Co-Ordinator has to verify the Register periodically.

SUB STOCK REGISTER:

- 1. All medicines received from Head Quarters or purchased locally has to be indicated in the receipt column.
- 2. Each medicine will be entered in separate folio.
- 3. The staff or any other person who receives the Medicine will sign the register.
- 4. The Accountant/Project Officers will verify the Register periodically.

CHEQUES / DRAFTS RECEIPT REGISTER

SI. No.	Date of Receipt	Cheque/DD No. of Date	Particulars	Amt. Rs. Ps.	Date Deposit	Date of credit by bank	Remarks



AUDIT: CONCEPT AND TYPES

M.K. Narasimha Rao

Donors contributing resources to voluntary agencies have the right to ask for an audit report by a chartered accountant and many times they do. Auditing is a systematic examination of the records maintained by an organisation to ensure that they are maintained according to the generally accepted accounting principles, that all statutory requirements are complied with and the policies laid down by the management are followed. Apart from donors, for organizations registered under the Societies Registration Act/Trusts Act, an annual audit is compulsory under the provisions of those Acts; a special audit may be ordered in exceptional circumstances.

The appointment, terms of reference and remuneration of auditors will be decided upon by the donors, competent authorities (under the Act), management or the members of the organisation depending on the type of audit. In the audit of a voluntary organisation, the three main areas for audit are accounting systems, records and reports, compliance with legal requirements and programme implementation. It is in the third area above that physical achievements, namely, improvement in social and economic conditions, are dealt with.

Definition

"Audit" is generally defined as an examination of books and records in order to ensure that the organisation has complied with the:

- a) Generally accepted principles and standards of accounting
- b) Requirements of statute(s)
- c) Policies and guidelines issued by the Board of Management and General Body of Members

Auditor

An auditor is a person, including a partnership firm, who is qualified to conduct such audit either under specific act (s) or otherwise. Depending on the type of audit, a chartered accountant or cost accountant or an auditor appointed by the Authority/Government is entitled to conduct an audit.

Scope & Period

The scope of an audit is generally spelt out in the terms of reference either defined in the Act or in the offer of appointment.

Audit starts from the time the offer of appointment is accepted and it is completed when the report, with certificate(s), is submitted to the appointing authority. Notwithstanding the above, any subsequent clarifications sought should also be attended to.



Powers of the Auditors

It is generally accepted that an auditor has powers to call for and get all documents, books, papers, files and any other document which, in his/her opinion, are required for proper performance of audit which he/she is required to perform in terms of the appointment.

Types of Audit

In normal circumstances, there could be four types of audits:

- a) Statutory Audit
- b) Internal Audit
- c) Special Audit under specific act (s)
- d) Audit by funding agency

Appointment of auditors

Auditors are normally appointed depending on the type of audit required, as detailed below:

Туре	Appointing Authority	
Statutory Audit	Members at the General Meeting	
Internal Audit	Board of Management	
Special Audit	Competent Authority under the Act(s)	
Audit by Donor	Donor	

Audit fee is normally agreed to by mutual discussion and agreement.

Audit reports are submitted to the Appointing Authority in specified formats, as fixed by statute (s) and/or Appointing Authority or in other cases in such manner as the author deems fit.

Statutory and Internal Audit

The following briefly distinguishes a statutory audit from an internal audit:

	Statutory Audit	Internal Audit			
Appointment	Members	Board of Management			
Reports to	General Body	Chief Functionary			
Discussion	Can be discussed by the members	Can be discussed by the Board of Management			
Format of Report	A fixed format is used	Auditor uses a format as per the terms of reference			
Scope	To examine the books and records and certify the state of affairs of the organisation (Balance Sheet, Income and Expenditure, Receipts and Payments)	To examine the records with respect to terms of reference and report thereon.			

An Internal Auditor assists the management to ensure that

- a) Books & records are maintained properly and completed in time.
- b) Statutory requirements are complied with.
- c) Directives of the Board and the General Body are complied with.
- d) Regular interaction between management and staff are held in the discharge of the above requirements.

The major distinguishing feature is, while a Statutory Auditor performs a legal requirement, an Internal Auditor assists the organisation. The former examines the books and records that are presented to him/her and reports, while the latter, after examination, informs the management as to the deficiencies/short-comings and how to rectify/make good the same. The report of the Internal Auditor is not discussed by the General Body, unlike the report of the Statutory Auditor. Certain checks and verifications (like fixed assets, stocks, work-in Process) are carried out by the Statutory Auditor during his audit. Further immediate corrective action, based on the findings and reports of the Internal Auditor (defalcation, misappropriation, shortage in stocks etc.,) can be taken rather than waiting for the statutory audit, which normally takes place at the end of or after the accounting year.

Scope of Audit

The coverage in relation to NGOs can be mainly classified into three major groups:

- a) Accounting
- b) Legal requirements
- c) Programme Audit

Accounting

Accounting can be further divided into:

- i) Books
- ii) Reports
- ii) Review
- iv) Verification

BOOKS are essentially referred to as "Books of original entry," which in the NGO context comprises:

- a) Cash Book
- b) Bank book
- c) Journal

REPORTS are generated/prepared/written from the books of original entry which are:

- a) General Ledger
- b) Subsidiary Ledger(s)
- c) Trial Balance
- d) Income & Expenditure Statement
- e) Receipts & Payments Account
- f) Balance Sheet
- g) Assets Register

REVIEW function is essentially a follow-up action arising out of the examination of records/documents to be maintained, with reference to proper compliance of policies/directives/guidelines. The review function encompasses:

- a) Financial procedures
- b) Advances & Outstanding amounts
- c) Ledgers & Balances

- d) Authorisations/Powers/Limits
- e) Staff matters: Attendance, Leave and Benefits
- f) Staff rules & regulations
- g) Organisation structure

VERIFICATION means a physical check and tally with books/records and covers:

- a) Cash
- b) Fixed Assets
- c) Stocks
- d) Investments and Deposits
- e) Titles

Legal Requirements

In a sense, this is done to ascertain that the organisation has complied with the requirements of law in order that lapse/failure does not result in penalty/action by the appropriate authority. Important Acts that NGOs need to comply with (to the extent and wherever applicable) are:

- a) The Societies Registration Act
- b) The Public Trust Act
- c) The Foreign Contribution (Regulation) Act
- d) The Income-Tax Act
- e) The Provident Fund Act
- f) The Professional Tax Act
- g) Other Act(s)

Programme Review/ Audit

Unlike the earlier accounting & legal requirements which are not "donor" related, programme review is essentially performed where a donor & donee relationship exists and the activities are usually development-oriented.

In the NGO scenario, a donor provides financial assistance and sometimes professional assistance to the NGO and in turn expects the NGO to implement a set of programmes, agreed upon mutually. These are subjected to monitoring and evaluation by the donor at a later date. As a part of the evaluation exercise, an audit of activities which can be directly quantified in terms of money is envisaged.

Programme monitoring/review by an auditor is performed in cases where programmes are income oriented, where the recipient derives the benefit in forms like:



- a) Acquisition of an asset which enhances his/her earning capacity.
- b) Improvement of an existing asset, individual/community
- c) Capital for any income-generating activity
- d) Provision of inputs that would enhance his/her income
- e) Provision of credit

Most activities envisage repayment of the funds by the beneficiary, either with or without interest, irrespective of the terminology used for interest. There are some programmes (for e.g., the goat programme) where the programme envisages repayments in kind.

The duty of the auditor involves examining:

- a) Appropriate sanction
- b) Budgetary outlay
- c) Proper and adequate documentation
- d) Receipt of the benefit by the eligible beneficiary
- e) Proper utilisation
- f) Proper maintenance of accounting records
- g) Regular follow-up
- h) Proper storage and security of materials and assets
- i) Insurance coverage where needed
- h) Implementation of authorised and approved procedures when dues are not recoverable

Conclusion

An Auditor should be viewed not as a *fault finder* but as one who has come to assist the organisation. He/She ensures that all transactions are properly accounted for in the best possible manner. The organisation's financial transactions should not only meet the requirements of the law and the donor, but also ensure accountability and transparency. He/She is and should be looked upon as a *disciplining friend & watch-dog* and not as a *blood hound or a critic!*

PROVISIONS OF INCOME-TAX ACT 1961, IN RELATION TO NON-GOVERNMENTAL DEVELOPMENT AGENCIES

M. Anand Kumar

It is not correct for an NGO to assume that, because it is doing some work which is useful to the society at large or because it is already registered as a trust or society, it is automatically exempt from Income-Tax Act provisions. The NGO has to take certain affirmative actions and actively seek specific exemption from the Income-Tax Authorities. The conditions to be fulfilled by the NGO in terms of its objectives, activities, accumulation of income and its application, maintenance of proper accounts, audit of accounts, report of auditors, filing of returns, registration procedures for follow-up etc. are all described in this paper in easy-to-understand language. Suggestions regarding framing the clauses of Memorandum of Associations, the maintenance of proper detailed books/registers/ log books, field reports, minute books are given which should be quite useful for established as well as yet-to-be-established NGOs.

Introduction

The post-independence period has seen the continuous growth of Non-Governmental Development Agencies, particularly in the rural development sector. Today this sector has emerged as an important sector in the country's economy with its own consortium of financial institutions and support organisations. Notwithstanding the increase in awareness among the NGO sector regarding the latest developments, trends and techniques in the social development sciences, unfortunately, in the area of taxation, there is a lack of awareness leading, at times, to critical situations affecting the very existence of the organisation. The object of this paper is an attempt to correct this situation by exposing in a non-technical and simple manner, the provisions of the Income-Tax Act as applicable to voluntary organisations. On many occasions, the author has come across a misconception in the minds of the accountants or even the chief executives of NGOs especially in remote or grassroots level areas that being a voluntary organisation and carrying on development work they are automatically exempt from the provisions of Income-Tax Act. This was true to a limited extent until 1973, when all voluntary contributions received by a trust or voluntary organisation were automatically exempt. After the amendment of Section 12 in 1973, the position totally changed and the provisions of Income-Tax Act, especially, Sections 11 to 13, became applicable to organisations receiving voluntary contributions.

We will examine step by step, the various provisions of Sections 11 to 13 which deal with the taxation of trusts and voluntary organisations.



1.00 Exemptions

1.01 Total Exemption from the provisions of the Income-Tax Act for certain organisations.

In the case of certain institutions of national status and national importance carrying on philanthropic work, their incomes are totally exempt under the provisions of Sections 10 (22) and 10 (23) of the Income-Tax Act. Even here, it should be understood that they are not automatically exempted on their creation by virtue of their activity. They have to apply for exemptions to the Central Board of Direct Taxes and Director General of Income-Tax (Exemptions) by submitting various details and documentary proof to substantiate that the organisation is of national importance and is carrying on philanthropic activity. Once again this exemption, even if granted, is not a blanket exemption for the whole life of the organisation but is generally granted for a 2 to 3 year period and has to be renewed from time to time.

Certain reporting procedures have also been specified to enable the Income-Tax Authorities to monitor the functioning of the organisation especially as regards the income of the organisation and its application. The stipulations mentioned above apply to -

- 1) Income of Universities or other Educational Institutions existing solely for educational purposes and not for purposes of profit [Section 10 (22)].
- 2) Income of Hospitals or other institutions for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence existing solely for philanthropic purposes and not for purposes of profit [Section 10 (22A)].
- Income of Associations and Institutions notified by the Central Government and having as their objective the control, supervision, regulation and encouragement of games in India like Cricket, Hockey, Football, Tennis or other games notified by the Central Government [Section 10 (23)].
- 4) Incomes of public charitable trusts or institutions registered under the Societies Registration Act and existing solely for the development of Khadi or Village Industries or both and not for profit, to the extent such income is attributable to the business or production, sale or marketing of Khadi or products of Village Industries [Section 10 (23B)].
- Income of funds or institutions established for charitable purposes notified by the Central Government in the Official Gazette, having regard to the object of the fund or institution and its importance throughout India or throughout any State or States [Section 10 (23C) (iv)].
- 6) Income of trusts or institutions wholly for public charitable purposes or for public religious purposes notified by the Central Government in the Official Gazette [Section 10 (23C) (v)].

1.02 Total Exemption in respect of certain donations

Under the present sections 11 and 12, the only category of donations or contributions which are automatically exempt are, corpus donations or contributions made with a specific direction that they shall form part of the corpus of the trust or institution. Many a time there is a misconception that the grants received by implementing organisations fall under this category since they are specific grants for a specified purpose. This is not the case. It should be remembered that the specification of the donor organisation is only with regards ti the expenditure heads or programmes for which the grant is to be used. It is not a specification that the grant shall form part of the corpus of the organisation. The object of this provision is only to exempt donations which form part of the corpus of the trust since the corpus is not going to be spent and therefore there is no need to ascertain whether the donation has been applied for charitable purposes.

2.00 Exemptions from income-tax in respect of incomes of other charitable organisations.

It is not as if only public institutions of national importance or only corpus donations are exempt from income tax. Incomes of other charitable institutions or even non corpus grants are exempt from income-tax under Sections 11 and 12 of the Income-Tax Act. This is subject to the satisfaction of certain conditions laid down by Sections 11 to 13.

We shall now proceed to examine these sections and attempt to put forth their substance in a simple manner, without the plethora of punctuation and confusing legal terminology normally accompanying statutory provisions.

Before we proceed we should note that in the history of charity and development the fundamental type of organisation that was envisioned for such purposes was a "trust" and consequently Sections 11 to 13 refer to incomes of trusts. Subsequently with the emergence of other forms of charitable institutions, Section 12 was introduced dealing with other types of non-trust institutions treating them on par with trusts. The discussion here is restricted to charitable organisations and references to religious organisations under Sections 11 to 13 have been eliminated.

3.00 Exemptions under Section 11 for Charitable Institutions and conditions to be satisfied.

Section 11 exempts incomes of public trusts and other charitable organisations provided that the objectives of the organisations are wholly charitable in nature and provided that at least 75 per cent of the income received during the year is applied for charitable purposes in India. From this simplified interpretation of Section 11, two conditions emerge namely:

- 1. The objectives of the organisation are wholly for charitable purposes.
- 2. 75% of the income has to be applied for charitable purposes within the same year and within India.



Let us now examine these conditions with reference to Non-Governmental Development Agencies.

3.01 Objectives of the Institutions should be wholly Charitable in nature.

The word charity though small in size and commonly used in day-to-day parlance is subject to legal discussions with several books and treatises written on it and with a multitude of case laws under the British and Indian judiciaries all leaving the readers generally dazed. With this on the one hand it is equally bewildering as to how, on the other hand, Section 2 (15) of the Income-Tax Act has briefly and sketchily defined charitable purpose as:

Charitable purpose includes relief of the poor, education and medical relief and the advancement of any other objects of public utility. This definition does not throw much light on what is "charitable purpose". This is an inclusive definition and not an exhaustive definition. The word charity has been given different interpretations under different circumstances and in different statutes. Further, whether a particular objective is charitable or not changes from situation to situation.

Based on the discussions of various taxation experts and different books on the subject, an attempt is made in the following to put in a simple manner what can be held as charitable objectives or what the conditions are for an objective to be treated as charitable:-

The objective should be of benefit to the community.

- 1. The objective should be public in character and should not have religious or communal restrictions or reservations.
- 2. There should be an essence of public utility in the objective.
- 3. The objective should not contain any element of profit or involve the carrying out of an activity for profit.

The general types of activities constituting charitable purposes under the Income-Tax Act are:

- 1. Relief of the poor.
- 2. Medical Relief.
- 3. Education.
- 4. Other objects of general public utility.

The construction of the Trust Deed or Memorandum of Association plays a very vital role in determining whether the objectives of voluntary organisations are charitable in nature. Unfortunately in the case of most of the developmental agencies, the main objects are very sketchy, poorly worded and in many cases, copied from the Memorandum of Association of other organisations without considering its applicability to their own organisation. In many cases, while the main objectives are specified, the ancillary objectives and purposes necessary

to achieve the main objectives are not mentioned.

It should be appreciated that under the Income-Tax Act, the interpretation of the word 'charitable purpose' is done more in a technical manner than in the general interpretation of the term. An objective, though charitable in nature, if not provided for in the Memorandum of Associations, would cause the organization to be treated as not having used its income for charitable purposes, in respect of such objective. It is also found from experience that in many cases the development agencies, in addition to their regular programs, carry out emergency programs like flood relief or drought relief, but these are not covered by the objectives specified in the Memorandum of Association. As a matter of abundant precaution, the following omnibus or umbrella clauses should be included under the main objects:-

- "Any other objective charitable in nature and of public utility defined or interpreted as "charitable" by the Income-Tax Act for the time being in force",
- "Without limiting the generalities of the above mentioned objects and clauses, to perform or carry out all such acts, deeds or things as may be necessary for the attainment of the main objectives herein above contained."

Development agencies, during the preparation of the Memorandum of Association, should endeavour to visualise as to what ancillary objectives the organisation may tend to carry out and make suitable provisions for them in the Memorandum of Association.

3.02 Application of Income to Charitable Purposes

- (1) This clause and especially the condition that 75% of the income should be applied for charitable purposes within the same year, is made with the purpose of preventing organisations from evading taxation under the guise of charitable organisations and also to prevent unnecessary and unwarranted accumulation of funds which would be the case, if such a provision were not there.
- (2) It should be appreciated that the word "applied" has a wider impact than the word "spent". Thus in cases of cash assistance or grants to the beneficiaries, it is sufficient if the grant is credited in the books of account to a separate account in the name of the beneficiary, for income to be considered as applied for charitable purposes. Development Agencies should take advantage of this especially when grants are being received belatedly by making suitable provisions for such items in order to minimise the percentage of accumulation of income.
- (3) Since the words used by the Income-Tax Act are "applied for charitable purposes", expenditure on acquisition of assets and capital expenditure as well as provisions for depreciation on assets would also qualify for the purpose of quantifying the percentage of income applied to charitable purposes.



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(4) In determining whether the income of the organisation has been applied for charitable purposes, one major aspect which is examined by the Income-Tax Authorities is whether the grants have been spent on sanctioned budget heads or cost plans only. This is done by comparing the actual expenditure heads in the annual statement of accounts with the expenditure heads as found in the approved budget accompanying the project agreement. It is observed that in many a situation zealous Income-Tax Authorities have held that the grant was not applied for charitable purposes where it was found that items of the programme expenditure were not in the sanctioned cost plan. To avoid such embarrassing and distressful situations, development agencies are advised to compare at quarterly intervals, their actual expenditure heads with sanctioned cost plans and in case of deviations, get the same sanctioned in writing from the donor agencies. Accountants are also advised to use the same definition for programme heads or expenditure heads as stipulated in the approved cost plan or programme budget. Care should be taken while preparing budgets of programs for approval by Donor Agencies to ensure that all possible heads of expenditure are covered.

3.03 Saving from taxation in certain cases where 75 percent of the income is not applied during the same year.

In many situations such as belated receipt of grants or other unforeseen contingencies, it may not be possible for an organisation to fulfil the condition as regards the application of 75 per cent of its income within the same year. The provisions of Section 11(1) and 11(2) provide for such situations and the excess accumulation would be exempted from tax provided certain conditions are fulfilled. These are discussed in the ensuing paragraphs.

- (1) A Resolution can be passed by trustees or governing body or managing committee for accumulating income in excess of the specified limit of 25 per cent, and also specifying the period for which the income is to be accumulated. The period of accumulation should not exceed 10 years.
- (2) Notice of the accumulation in the specified form (Form 10) along with a true copy of the resolution should be filed with the Income-Tax Officer before the due date for filing the income tax return.
- (3) Till the time of actual application or expenditure, the excess income should be deposited or invested in the accounts or securities mentioned namely:
 - a. Investment in Government Saving Certificates
 - b. Deposit in Post Office Savings Bank Accounts
 - c. Deposits in Accounts with Scheduled Banks
 - d. Investment in Units of Unit Trust of India
 - e. Investment in Securities issued by the Central Government or any State Government.
 - f. Investment in any Debentures issued by any company or corporation where both the principal and interest are unconditionally guaranteed by the Central Government or State Government.

- g. Investment or Deposit in any Public Sector Companies.
- h. Deposit with or investment in any bonds issued by financial corporations approved by the Central Government engaged in providing long-term finance for Industrial Development.
- i. Deposit or investment in bonds of approved public companies carrying on the business of providing long-term finance for the construction or purchase of houses.
- j. Investment in Immovable Property other than Plant and Machinery.
- k. Deposits with Industrial Development Bank of India.
- l. Any other form or mode of investment or deposit as may be prescribed.
- (4) The Act also provides for extreme situations where, for some reason or the other, it is not possible for the excess accumulation to be spent for purposes for which it was accumulated. In such cases, the organisation would be allowed to apply the accumulation for other charitable purposes, provided they are covered by the objectives of the organisation and an application is made in writing to the concerned Income-Tax Officer under Section 11(3A).
- (5) Sub-section 11(3) provides that any income which is not applied for charitable purposes, or is not deposited in the specified modes or is withdrawn therefrom or is not spent for the purposes for which accumulated, shall be treated as the income of the organisation, meaning that this shall be subject to tax.

Thus, under this section, it is only the amount of expenditure which is held as not applied for charitable purposes or the actual amount which is not deposited in the specified purposes or expended for the specified purpose of accumulation, which is brought to tax, and not the entire income of the organisation.

4.00 Restrictions on carrying out activities for or involving profit.

The objectives of the organisation or the application of its income should not consist of activities for or involving profit. The only exemption to trusts and voluntary organisations enabling them to carry on business was available until 1991, in two situations or conditions namely:

- a) A business carried on by wholly charitable institutions consisting of printing and publication of books or of a kind notified by the Central Government in the Official Gazette, or
- b) A business is carried on by a wholly charitable business and the work in connection with the business is mainly carried on by the beneficiaries of the institution.

However, with the amendment of Section 4A, with effect from 1-4-1992, the position has been liberalised to a substantial extent. It is now possible for a charitable institution to carry on any business or activity for profit provided it is incidental to the attainment of the main objectives of the institution.

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5.00 Registration of Voluntary agencies with Income-Tax Authorities for tax exemption purposes.

- 5.1 A pre-condition to the availing of the benefit of exemption under Section 11 is that the organisation should be registered with the concerned Commissioner of Income-Tax under Section 12A of the income-Tax Act. Unfortunately, many organisations are not aware of this, being under the assumption that registration under the Societies Act and carrying on voluntary work are sufficient. But this is not so. The registration under the Incometax Act is mandatory and has to be applied for within a period of one year from the date of formation of the society. For organisations which have not applied for the registration or have applied late there is a saving provision in that the Commissioner of Income-Tax at his discretion can condone the delay. It is found that generally the Commissioners of Income-Tax have been sympathetic and understanding in the exercise of this discretion and when satisfied that the delay in applying for registration was not wilful, deliberate or with a malafide intent, they have condoned delays of even a few years in some extreme cases.
- 5.02 The procedure for registration is that an application in Form 10A has to be made in triplicate to the concerned Commissioner of Income-Tax accompanied by copies of the Certificate of Registration of the Society, Memorandum and Bye Laws and copies of the audited accounts, if any, from the date of starting of the society till the date of application for registration. A court-fee stamp of the value of Re.1/- has to be affixed on the application.
- 5.03 A copy of the application would be forwarded to the concerned Income-Tax Officer by the Commissioner. The Income-Tax Officer then has to verify whether the organisation is genuinely voluntary in nature and is carrying on charitable activities. He/she also has to see whether the society has complied with certain mandatory requirements. This is done by calling for the books of accounts of the society, bank pass books, correspondence, etc.
- 5.04 The process of granting of the registration under Section 12A though of great importance, unfortunately, is a very bureaucratic and slow process, and at times has taken a few years. The following course of action is suggested to speed up the registration.
 - a) Immediately after filing of the application for registration, constant follow-up has to be made to ensure that a copy of the application is forwarded to the concerned Income-Tax Officer for submission of his/her report. The registration process cannot start unless this is done.
 - b) Simultaneously, copies of the application in Form 10A along with the accompanying documents in triplicate duly affixed with a Rs.1/- Court Fee stamp should be filed with the Income-Tax Officer.
 - c) A detailed discussion should be held with the Income-Tax Officer to satisfy him/her that the society is genuinely a charitable institution. This could be done by explaining the aims and objectives of the institution, especially the need for setting up the

institution. Copies of correspondence with the donor agencies, programme proposals and sanctioned grant correspondence, could be added as additional proof to substantiate the case.

- d) The Income-Tax Officer has to forward a report in a prescribed format to the Commissioner of Income-Tax, through the Deputy Commissioner concerned. Follow-up is required in the Deputy Commissioner's office to ensure that the papers are forwarded to the Commissioner of Income-Tax.
- e) Follow-up should then be made in the Commissioner's office to ensure that registration is granted.

6.00 Certain mandatory clauses in the Memorandum of Association and Bye Laws.

- 6.01 While Section 12A dealing with registration does not provide this, as an administrative procedure to ensure that institutions do not misuse the benefit of registration by changing their objectives at a later date or other such measures, certain protective clauses are insisted upon by the Commissioner of Income-Tax to be included in the bye laws of the society, as a pre-condition to registration. These are:
 - 1) That no amendments shall be made in the Memorandum of Association or Bye Laws without the prior written consent of the concerned Commissioner of Income-Tax.
 - 2) That the funds of the institution will not be diverted directly or indirectly to the founders of the institution.
 - 3) That the surplus funds of the institution will only be invested in approved securities as listed in the Income-Tax Act.
 - 4) That on the winding up of the Institution, the income and property shall be handed over only to charitable institutions with similar objectives and which are registered under Section 12A.
- 6.02 In the case of institutions which are in the process of being set up, these clauses can be included in the Memorandum of Association and Bye Laws. But in the case of institutions which are already set up, the Memorandum and Bye Laws have to be amended by the General Body to include these clauses. A copy of the resolution has to be forwarded to the concerned Registrar of Societies. Thereafter, a certified copy of the amended Memorandum of Association and Bye Laws has to be filed with the Commissioner of Income-Tax.

7.00 Effect of refusal of registration and remedy

The effect of refusal of registration is very severe and in such cases the entire receipts of the society (without any deduction of the expenditure) would be brought under taxation. From past experience it is seen that very rarely has registration under Section 12A been refused and if so only in cases where it was felt that the institution was being formed for political or radical purposes. In an extreme situation, however, if registration is refused, either for delay in application or any other reason, the only recourse to the organisation would be to approach the Central Board of Direct Taxes, New Delhi, with a grievance petition.

8.00 Stipulation as regards Audit

Yet another stipulation laid down by Section 12A is that the accounts of institutions whose receipts exceed Rs.50,000 per annum (Rs.25,000 upto assessment year 1994-95) should compulsorily be audited by a Chartered Accountant and his/her report, in the specified form, should be enclosed with the return of income. This is not of much relevance these days since in the first place donor agencies insist for the accounts to be audited. A separate audit for Income-Tax is not required. All that has to be done is that in addition to the normal report of the auditor, a separate report in Form 10B has to be obtained.

9.00 Certain Restrictions on charitable institutions

9.01 In order to prevent misuse of charitable institutions by the founders thereof as means of diverting tax-free income or assets to themselves, Section 13 stipulates that the institution will not be entitled to the benefit of exemption under Section 11 in case the income or property of the trust has been used directly or indirectly to benefit certain "interested persons." This section by its generality of construction and the use of the words "used directly or indirectly for the benefit of...." has given very wide, unfettered and discretionary powers to the Income-tax Officer. In a real-life case of one organisation, exemption was denied since from the log book of the organisation it was found that the wife of one of the office-bearers had taken the vehicle of the organisation for her personal use. This, of course, is an extreme case. It is, however, advisable to be cautious when providing facilities to the office-bearers of the organisation or other interested persons.

9.02 The persons referred to as interested persons in Section 13 (3) are:

- 1) The author of the trust or founders of the institution.
- 2) Any person who has made a contribution in excess of Rs.50,000 (Rs.25,000 upto assessment year 1994-95) during the year to the trust or institution.
- 3) Where the author or founder or person referred to in clauses 1 and 2 above, is a Hindu Undivided Family or any member of such family.
- 4) Any trustee, office bearer or manager of the institution.
- 5) Any relative of any of the above persons.
- 6) Any concern in which any of the above persons has a substantial interest. Substantial

interest has been defined as where the holder is entitled to a 20% or higher voting power or 20% or higher share in the profits of the concern.

- 9.03 The word relative used in clause 5 above has been defined to include the following relatives:
 - 1) Spouse of the individual.
 - 2) Brother or Sister of the individual.
 - 3) Brother or Sister of the spouse of the individual.
 - 4) Any lineal ascendant or descendant of the individual.
 - 5) Any lineal ascendant or descendant of the spouse of the individual.
 - 6) Spouses of the persons referred to in clauses 2 to 5.
 - 7) Any lineal ascendant or descendant of the brother or sister of the individual or of his spouse.

At a perfunctory glance it may seem that there are only 7 classes of relatives but a close examination would reveal that practically every conceivable relative, near or distant, in a family tree has been covered.

- 9.04 Section 13 (2) has spelt out some of the cases where it can be held that the income or property of the institution has been used directly or indirectly for the benefit of the specified persons. This once again is not an exhaustive list but only specifies certain ways. There is, however, no bar on the Income-Tax Authorities from interpreting a transaction as one directly or indirectly benefiting a specified person even if not covered by the examples given in Section 13 (2).
- 9.05 The following cases have been specified by Section 13 (2).
 - 1) If any part of the income or property of the trust or institution is, or continues to be, lent to any specified person for any period during the previous year without either adequate security or adequate interest or both.
 - 2) If any land, building or other property of the trust or institution is, or continues to be, made available for the use of any specified person for any period during the previous year without charging adequate rent or other compensation.
 - 3) If any amount is paid by way of salary, allowance or otherwise during the previous year to any specified person in excess of what may be reasonably paid for the services of such person.
 - 4) If the services of the trust or institution are made available to any specified person without charging adequate remuneration or compensation.



- 5) If any share, security or other property is purchased by or on behalf of the trust or institution from any specified person for consideration which is more than adequate.
- 6) If any share, security or other property is sold by or on behalf of the trust or institution to any specified person and the consideration is less than adequate.
- 7) If any income or property of the trust or institution in excess of Rs.1,000.00 is diverted in favour of any specified person. (This once again is a generally constructed clause giving very wide interpreting powers to the Income-tax Authorities.)
- 8) If any funds of the trust or institution are, or continue to be, invested in any concern in which any specified person has a substantial interest as defined earlier.

The words adequate and reasonable are constantly used in the situations given in Section 13(2) but unfortunately these terms have not been defined. The question arises as to what can be the measure of adequateness or reasonableness. This is not left open to the whims and fancies of even the Income-Tax Authorities. The extent of adequateness or reasonableness has to be ascertained in comparison with the generally accepted estimation principles. The following can be the measures of estimation:

- 1) In the case of adequate security or interest, the measure would be the security which a prudent lender of funds would normally expect, and the rate of interest which the organisation would get, if invested in the specified securities.
- 2) In the case of adequate rent or other compensation the measure would be the normal rent or compensation the property would get based on the rental of similar properties in the area.
- 3) In the case of salary and allowances the measure would be the normal salary any other organisation would pay to the individual based on his/her qualification, experience, the nature & type of services rendered by him/her.
- 4) In the case of consideration for any share, security or other property, the measure would be the normal purchase or sale price which the item would command in the open market.
- 5) In the case of compensation for other services, the measure would be the normal charge which the individual would have to pay if such services were obtained by him/her from any other organisation.

Of course, some concession or discount can be given if the individuals are working in an organisation on the grounds of welfare measure, but once again this should not be of an unreasonable extent.

10.00 Previous Year and Assessment Year

- 10.01 'Previous Year' means the accounting year of the organisation. Prior to 1st April, 1988 it was open to the organisation to choose any period of 12 months as its accounting year. Consequently most of the development agencies depending on foreign grants adopted the calendar year as their acounting year to coincide with the accounting year of the donor organisation. Even under the Foreign Contributions Regulation Act, returns to be filed with the Home Ministry were for the calendar year. This was because even banks were adopting the calendar year as the accounting year. But with the amendment of Section 3 of the Income-Tax Act with effect from 1-4-1988 it became compulsory for every one to adopt the financial year (1st April to 31st March) as the previous year for Income-Tax purposes. Even then since the returns were sent to the Home Ministry for the calendar year, most of the development agencies continued to adopt the calendar year as their accounting year. For purposes of income-tax, however, a separate statement would be drawn up for the financial year. Presently, however, even the FCRA has been amended and returns thereunder also have to be filed for the financial year. Consequently most voluntary organisations have changed over to the financial year as their accounting year. Since the accounting year varies among donor agencies, separate receipts and payments statements may have to be drawn up in order to fulfil their requirements.
- 10.02 'Assessment Year' is always in connection with the previous year or accounting year and is the year commencing from 1st April following the end of the accounting year. Thus for the year ending 31st, March 1992, the assessment year would be the year from 1st April 1992 to 31st March 1993.

11.00 Filing of Return of Income

Under Section 139 (4A) of the Income-Tax Act, it is compulsory for every organisation having income from property held under trust or voluntary contributions to file a return of Income.

The return of income has to be filed in Form 3A and has to be accompanied by a copy of the audited annual accounts, the auditors report in Form 10B, notice of accumulation in Form 10 (if there is any accumulation) and a certificate from the trustees or managing committee or governing body members that the provisions of Section 13 as regards diversion of funds have not been infringed. The due date of filing the return of income is 31st October following the close of the accounting year (31st March).

12.00 Actions after filing of the Return of Income

12.01 In the case of the first year of the trust or institution, the file compulsorily would be taken up for scrutiny and the organisation would be issued a notice under Section 142 asking it to produce its books of accounts for the relevant accounting year. It is advisable that both the Chief Executive and Accountant of the organisation be present. This is because



in many cases it has been found that the accountants have not been able to explain properly the concepts and ideologies of the programmes or expenses. During the course of the assessment, the Income -Tax Officer would ascertain whether the organisation has properly applied its income for charitable purposes in India and whether there is any instance of diversion of funds attracting the provisions of Section 13. This is done by an examination and study of the vouchers and other documents in support of the expenditure and the bank pass books. From experience it is found that in a majority of organisations proper voucher maintenance is not done. Most organisations confuse vouchers for the printed forms which the organisation uses. This is not so. A voucher means the actual proof of the expenditure. In the case of development agencies, due to the nature of expenditure in certain programmes and other circumstances peculiar to such agencies it is difficult to obtain proper vouchers or satisfy an outside agency as to the genuineness of the expenditure, e.g. programs of land reclamation, well-digging, training programs, etc.. In such cases before the commencement of the program itself, it would be advisable if discussions are held with the auditors and representatives of the donor agencies (if available in India) and some sort of procedures and documentation designed for such expenditure which the auditors and Government authorities can rely upon. Video pictures and photographs as well as filed reports of the field officers of the donor agencies or the periodical progress and evaluation reports can also play a vital role in this exercise.

- 12.02 The minutes book of the organisation (both of the managing committee and the general body) can also help in proving the genuineness of the project. The Income-Tax Authorities rely to a great extent on this. Unfortunately, in many organizations even the minutes book is non-existent or if it does exist, is very poorly drawn up.
- 12.03 The active participation of the auditors and their involvement in the project also would play a great role in the success of the accounting and administrative machinery of the development agency. The auditors should be asked to pay field visits on a half-yearly basis and should submit a field report. This would also be relied upon by the Taxation Authorities.

13.00 Tax Exemption for Donors in respect of Donations

- 13.01 Individual donors and Indian organisations can avail of exemptions in respect of donations made to registered trusts and institutions to the extent of 50% of the donation, provided the trust or institution is registered under Section 80G of the Income-Tax Act. The procedure for this registration is the same as the registration under Section 12A, the only difference being that the registration under Section 12A is a one time registration which is permanent unless cancelled by the Commissioner of Income-Tax, whereas the registration under Section 80G is for periods ranging between 1 to 3 years and has to be renewed. The process for renewal is the same as that of registration.
- 13.02 In case the development agency is registered under the provisions of Section 35CCA for carrying out rural development programs of national importance, the donors for such an organisation can avail of 100 % exemption in respect of donations made. The application

for registration in this case has to be made to the Director General of Income-tax (Exemptions), Calcutta and to the Central Board of Direct Taxes and the concerned Ministry at New Delhi.



TAX MANAGEMENT OF CHARITABLE/RELIGIOUS TRUSTS AND INSTITUTIONS

Anil Charnalia

In one of the other contributions, the subject of different types of organisational structure for a voluntary organisation has been discussed. In this paper some aspects relating to the incometax of Charitable/Religious Trusts are discussed. Normally, all income, whether earned by a business or a voluntary organisation, is taxable. But, considering the noble objectives like relief of the poor, education, medical relief or the advancement of any other object of general public utility, the law provides certain tax exemptions to charitable trusts and institutions pursuing such objectives. However, to get these exemptions, certain requirements need to be fulfilled. These relate to proper maintenance and independent audit of accounts, registration of the trust with the Income-Tax authorities and using atleast 75 percent of the income earned in pursuing the objectives and investing the rest in approved manner. When these requirements are violated, the tax exemption status will be lost and the trust will be liable to pay income tax.

The Income Tax Act uses several terms like "Relief", "Education", "Medical Relief", "Public Utility" and "Prescribed Manner". In several cases decided by various state High Courts and the Supreme Court, the interpretation of these terms has been elucidated and some of these cases have been described.

Introduction

The concept of tax management has assumed great importance for all types of public charitable/religious trusts due to the complexities of tax laws and the spate of amendments made from time to time by the legislature. One of the very important aspects of tax planning exercise would be incomplete without the study of tax management since tax management basically covers matters relating to compliance with legal formalities, to avail of various tax incentives and to save the assessee from the perils of penalties and prosecutions. This area generally deals with securing the stipulated tax incentives by complying with certain conditions, procedures and rules provided by the legislature. These include timely submission of returns and statements, estimates of advance tax, timely applications of claims, compliance with required statutory conditions to claim benefits, concessions and relief admissible under the tax laws and lastly the review of assessments and other orders to determine the admissibility of further appeals, revisions and review. We shall focus the attention of the readers to some important aspects of tax management in respect of charitable/religious trusts and institutions.

Under the provisions of sections 11,12,12A and 13 read with sections 60 to 63 of the Income -Tax Act, the income of charitable/religious trusts is exempted from income tax subject to the fulfilment of certain conditions. Such trusts/institutions are entitled to exemption under Income-Tax Act when they are created or established for charitable purposes as defined under Section 2 (15) of the Income-Tax Act, 1961.



Registration with Income - Tax Commissioner

It is incumbent for all charitable/religious trusts and institutions to get themselves registered with the Commissioner of Income-Tax having jurisdiction over the trust under the provisions of Section 12A of the Income-Tax Act, otherwise exemption under Section 11 will not be available. The application for registration in Form 10A must be furnished before the expiry of a period of one year from the date of creation of trust or establishment of trust/institution. Where the total income of the trust, without considering the effect of Section 11 exceeds Rs.25,000/- in that year, the accounts of the trust should be duly audited by a Chartered Accountant and the audited report must be furnished along with the return of the income. Under the amendment the said monetary limit has been raised to Rs.50,000/- in relation to assessment year 1995-96 and subsequent years. The proforma for submission of auditor's report is given in Form 10B. The advantage of registration with Commissioner of Income-Tax is that it is not necessary to file the annual return if there is no taxable income. For getting registration with CIT, the trust should submit an application in Form 10A along with a certified copy of instrument.

Submission of Timely Returns

Section 139 (4A) provides that any person in receipt of income derived from property held under trust or any other legal obligation wholly for charitable or religious purposes or in part only for such purposes or, in case of income being voluntary contributions referred to in Section 2 (24) (11A) shall, if the total income in respect of which he is assessable as a representative assessee, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner. The total income for this purpose has to be computed under the Income-Tax Act without giving effect to the provisions of Sections 11 and 12. The return has to be submitted in Form 3A by the 31st October of the assessment year. It is to be noted that, where charitable/religious trusts/institutions do not file a return of income, they become liable to payment of penalty under Section 272 (A) 2 which can be Rs.100/- for every day of default up to Rs.200/- per day being the maximum.

Application of Income by charitable/religious trusts

A charitable/religious trust is liable to Income-Tax on its income, if it applies less than 75% of its income for charitable/religious purposes. For getting exemption from income-tax, the trust should generally spend for charitable/ religious purposes in India, the income of the trust which includes voluntary non-corpus donations. For determining the percentage of income to be spent, only the net income of the trust will be taken into consideration viz. gross receipts less all expenditure incurred by the trust. In case a charitable/religious trust is not able to apply 75% of its income for specified purposes during a particular previous year, the trust is permitted to spend in the immediately following year in which the income is received or derived. The trust in such a case is required to exercise its option in writing before 31st October of the relevant assessment year, which is normally the last date for filing the return of the income. When the whole or part of the income has not been received during a particular accounting year, the

trust can still get income-tax exemption after exercising the option and taking necessary steps for applying the income for charitable/religious purposes.

Accumulation of Income by Charitable/Religious Trusts

In cases where charitable/religious trusts propose to set up big projects like educational institutions, hospitals, dispensaries and the like, they may not be in a position to apply or spend 75% of its income for charitable/religious purposes in India. In such cases the trust is given an option to accumulate or set apart either the whole or part of the said 75% of its fair income for a maximum period of 10 years. For this purpose, the trust has to fill Form No.10 and send the same to the concerned Income-Tax Officer specifying the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart.

Modes of Investments

Charitable/religious trusts and institutions have to exercise great caution on the investments of their funds in approved securities and other modes of investment specified under Section 11 (5) of the Income-Tax Act. The Finance Acts of 1983 and 1984 have laid down the approved modes of investment of trust funds as under:-

- I) Investment in savings certificates and any other securities or certificates issued by the Central Government under the Small Savings Scheme.
- ii) Deposit in any account with the Post Office Savings Bank.
- iii) Deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking.
- iv) Investment in units of the Unit Trust of India.
- v) Investment in any security for money created and issued by the Central Government or a State Government.
- vi) Investment in debentures issued by any company or corporation whereon the principal and interest are fully and unconditionally guaranteed by the Central Government or by a State Government.
- vii) Investment or deposit in any Government company.
- viii) Deposit with or investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India.



- ix) Deposit with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of house in India for residential purposes.
- x) Investment in immovable property.
- xi) Investment with the Industrial Development Bank of India.

Forfeiture of Exemption

The following incomes of charitable/religious trusts and institutions do not qualify for exemption under Section 11

- 1. Income from property held under trust for private religious purposes which does not inure for the benefit of the public (Section 13 (1) (b).
- 2. Income of a charitable trust/institution established on or after 1st April 1962 created for the benefit of any particular religious community or caste (Section 13 (1) (b).
- 3. Income of religious/charitable trust/institution created or established after 31st March 1962 which inures, directly or indirectly, under the rules governing the trust for the benefit of any person specified in Section 13 (3) i.e. author, founder or substantial contributor of the trust, any relative of such author, founder, substantial contributor or any concern in which such person has a substantial interest (Section 13 (1) (c) (i).
- 4. The exemption under Section 11 (1) (a) is available only if at least 75% of the income is applied for charitable/religious purposes in India during the year and the remaining amount is invested in forms/modes specified under Section 11 (5). Thus both the requirements will have to be fulfilled before the trust can claim and avail of the exemption under Section 11 (1) (a). For instance, a trust derives income from property held for charitable purposes to the extent of Rs.40,000/- in a year. Under Section 11 (1) (a) it has to spend at least Rs.30,000/- for the charitable purpose. The balance of Rs.10,000/- will have to be invested in the forms/modes prescribed under Section 11 (5). It is only then that the entire income of the trust will be exempted.
- 5. In a case where the aggregate of funds of the trusts/institutions is invested in a concern in which any person specified in Section 13 (3) has a substantial interest, does not exceed 5% of the capital of that concern, the exemption under Section 11 will not be denied in relation to any income other than the income arising from such investment.
- 6. Any charitable/religious trust or institution will forfeit exemption from tax if any funds are invested or deposited after 28th February 1983 otherwise than in anyone or more of the modes specified above. Trusts and institutions which continue to hold any shares in

a company other than a government company or statutory corporation from the said date will also forfeit exemption from income tax.

7. Business income of certain charitable/religious trust will be exempted from tax.

Though business income of certain charitable/religious trusts would still be exempted from income tax, by the amendment of the Income Tax Act by the Finance Act of 1983, a trust carrying on business is not entitled to income tax exemption. However, Section 11 (4A) (b) of the Income-Tax Act with effect from the year 1984-85 provides that the profits and gains of business of a charitable trust will be exempt if the work in connection with the business is mainly carried on by the beneficiaries of the institution in respect of such business. However the above conditions have since been amended and the Section 11 (4A) now provides that provision relating to exemption, accumulation and application of trust income as contained in Section 11 (1) (2) (3) & (3A) will not apply to any profits and gains of business, unless the business is incidental to the attainment of objectives of the trust, and separate books of accounts are maintained by such trust in respect of such business.

Corpus Donation

Under the provisions of Income-Tax Act, 1961 corpus donations made to a trust are not considered as income of the trust. Thus charitable or religious trusts may receive corpus donations as far as possible, as they are not required to spend corpus donations. Corpus donation is one which is made by the donor to the trust with the specific direction that it shall form part of the corpus of the trust or institution. To understand the complexities of law relating to charity it is essential to go through various legal pronouncements from time to time. The expression "Charitable Purpose" is defined in Section 2 (15) or the Income Tax Act, 1961.

This definition can be divided into four heads:-

- 1. Relief of the poor
- 2. Education
- 3. Medical relief and
- 4. The advancement of any other object of general utility.

These four heads are discussed below:

Relief of the poor

The relief, in order to be charitable, may not be given in the form of free doles or alms to the poor. It may be in the form of payment of wages for the specific work given to them mainly with a view to relieving their poverty. The relief may be of the poor generally, or of a section of the poor public, Herman. J in Baddly Vs. CIT defined "relief" as:



"Relief seems to connote need of some sort-either the need for a home or for the means to provide for some necessity or quasi-necessity and not merely an amusement, however healthy it is ".

The observations of Chagla. J in the case of Trustees of Gordhandas Govindram Family Charity Trust Vs. CIT Bombay that "when you relieve poverty you supply a person with the bare necessities of life" cannot therefore be literally interpreted to mean to refer to relieving absolute want or grinding need. When it is said that relief of poverty is by way of bounty, it does not mean relief of poverty by way of bargain. Relief of poverty to qualify as a charitable purpose must be public in character. The relief of the poor must not be a relief to a body of private individuals but must have a public character.

In England, a trust for relieving poverty of relatives of a settler is a good charitable object, even if no member of the public is permitted to benefit in such a trust. But in India relief of the poor by itself will not be a charitable object unless it involved an object of general public utility. In order to be a valid charitable trust, the object "relief of poor" must be directed for the public or a section of it.

The full bench of the Madras High Court held in CIT Vs. Jamal Mohamad that the creation by way of a WAKF, for the maintenance, education, marriage, funeral and other necessities of the poor and needy among the descendants of the WAKF, did not constitute a trust for public charity. This view of the Madras High Court was followed in CIT Vs. Aga Abbas Shirazi, by the Calcutta High Court in Re: Mercantile Bank of India Agency Ltd and by the High Court of Bombay in Arur Vs. CIT and trustees of Gordhandas Govindram Family Charity Vs. CIT. The relief of the poor must also be of the public or a section of it. If it is limited to a family, it is not for a public charitable purpose.

Education

"Education" is the second head in the definition of "Charitable Purpose". According to the preamble of the Statute of Elizabeth "maintenance of school of learning, free schools and scholars of university" are legal charitable purposes.

Gift for the establishment and support of schools of learning or for the benefit for colleges or universities making provisions for school masters, bequests for formation of scholarships, fellowships or lectures, foundation prizes for essays or athletic sports as well as gifts to institutions are charitable.

A gift for educational purpose is nonetheless charitable because it contemplates a particular type of education or the education of a particular class of persons or the promotion of a particular branch of study.

Education includes advancement of technical education. Property held by a body corporate or incorporated for the promotion of education, literature, science or the fine arts is technically held upon a charitable trust.

Education in the context of the law of charity, is not limited to teaching in the narrow scene. In Sole Trustee, Lok Shikshana Trust Vs. CIT, the Supreme Court gives an unduly restricted meaning to the word "education". It has observed:

"The sense in which the word education has been used in section 2 (15) is the systematic instruction, schooling or training given to one young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word education has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removed your wallet and the swindler who cheats you teach you a lesson and in the process make you wise though poorer. If you visit a night club, you get acquainted with and add to your knowledge about some of the not-much-revealed realities and mysteries of life. But that is not the sense in which the word education is used in clause (15) of section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by formal schooling."

The Gujarat High Court, however, in the case of Gujarat State Coop. Union Vs. Commissioner of Income-Tax as reported in 195 ITR 279, held on Feb. 7, 1989:

Exemption-Income of Educational Institution-Meaning of education - Difference between Section 10 (22) and Section 11-Co-Operative Union imparting education to members of cooperative societies and to workers in co-operative movement, co-operative union also running library and publishing journals-education constituted main activity of co-operative union-Cooperative union entitled to exemption-Income-Tax act, 1961 Section 10 (22).

Under Section 10 (22) of the Income-Tax Act, 1961 it is provided that in computing the total income of a previous year of any person, any income falling within the said clause, that is, any income of a university or other educational institution existing solely for educational purposes and not for purposes of profit shall not be included. Though in the context of the provisions of section 10 (22) the concept of education need not be given any wide or extended meaning, it surely would encompass systematic dissemination of knowledge and training in specialised subjects. The question whether an educational institution is existing solely for educational purposes can be decided with reference to the activities actually carried on by it. Advancement of knowledge brings within its fold suitable methods of its dissemination and though the primary method of sitting in a classroom may remain an idea for most of the initial education it may become necessary to have a different outlook for further education. It is not necessary to nail down the concept of education to a particular formula. Its progress lies in acceptance of new ideas and development of appropriate means to reach them to the recipients. Section 11 (a) applies to income derived from property held under trust wholly for charitable or religious purpose while section 10 (22) covers any income of a university or other educational institution existing solely for education purposes and not for purposes of profit. The exemption incorporated in Section 11 (a) is only in respect of the extent to which the income derived from the property is applied for charitable purpose which includes educational charity. If the



income is only accumulated or set apart for such purpose, the exemption is limited to the extent of 25 per cent of the income from the property held under such trust. The exemption under Section 10 (22) on the other hand, is without any limitation. The language of Section 10 (22) emphasises that the sole purpose of the existence of the institution should be educational. The very provision of exemption under Section 10 (22) indicates that the income of such institutions is contemplated. Therefore, mere existence of profit will not disqualify the institution if the sole purpose of its existence is not profit-making but educational activities. Incidental activities connected with the educational purposes for which the institution exists which result in income will not disqualify the institution, for Section 10 (22) by its very nature, contemplates income of such institutions which is to be exempted under that provision.

The Court thus made a departure and used the word education in a much wider sense.

Educational institutions: Section 10 (22) of Income-Tax Act, 1961 grants exemption from tax to "any income of a university, or other educational institution, existing solely for educational purposes and not for purposes of profit." The expression qualified the words "a university or other educational institution."

The term "education", however, as used in section 2 (5) of the Act, seems wider and more comprehensive than education through educational institutions, such as universities whose income is given an exemption on income tax separately under section 10 (22) provided the educational institution concerned, does not exist "for purposes of profit".

Separate ground of exemption, apart from Section 11: If there is any infringement with regard to the requirements of sections 11, 12, 12-A and 13, the department cannot tax the institution, provided the case completely falls within the ambit of section 10, sub-section 22 or 22 A as the case may be. Thus the exemption available under these clauses is separate from or in addition to the exemption granted under Section 11 i.e. with Sections 12, 12 A and 13 which generally deal with charitable trust, association or institution which would be entitled to exemption even if the same income also falls under Section 11 and the conditions for exemption under that section are not fulfilled.

It is quite clear that the exemptions are in favour of the educational or medical institution existing only for the purposes of imparting education rather than for profits. They are covered by Section 10 (22 and 22 A) of Income-Tax Act and cannot therefore, be subjected to tax.

Professional Associations: Education is not limited to teaching, but certain professional associations come under this head. A college established, "for promotion and encouragement of the study and practice of art and science of surgery" was held by the court as an act of charity.

Medical Relief

The definition of charitable purposes given in Section 2 (15) specifically refers to medical relief as one of the four categories of charities mentioned therein.

Any act which provides the medical facilities to the public will fall under this head. But the motive should be charity and not profit in order to come within the definition "charitable purpose".

Medical relief premises aid for the sick. It means treatment of persons suffering from illness and requiring medical attention or rehabilitation. Medical relief must be public in character and for the general public or a section of it. It should be for philanthropic purpose and not for purposes of profit.

Any other object of general public utility

"General" means pertaining to a whole class. "Public" means the body/class of public and "Utility" means usefulness. Therefore, the advancement of any object of benefit to the public or a section of the public as distinguished from an individual or a group of individuals, would be of charitable purpose (CIT Vs. Ahmedabad Rana Caste Association 1973 88 ITR 354, 364 (Guj) affirmed CIT Vs. Ahmedabad Rana Caste Association (1983) 140 ITR 1 (SC) Bar Council of Maharashtra Vs. CIT (1980) 126 ITR 27, 35 (Bom) Affirmed (1981) 130 ITR 28 (SC). The expression "any other object of general public utility" is of the widest connotation.

The expression "object of general public utility" in Section 2 (15) would prima facie include all objects which promote the welfare of the general public. It cannot be said that a purpose would cease to be charitable even if public welfare is intended to be served. If the primary purpose be advancement of objects of general public utility, if would remain charitable even if an incidental entry results into the political domain for achieving that purpose is contemplated (CIT Vs. Andhra Chamber of Commerce, 1965 55 ITR 722,732).

To serve a charitable purpose it is not necessary that the object should be to benefit the whole of mankind or even all persons living in a particular or province. It is sufficient if the intention is to benefit a section of the public as distinguished from specified individuals.

In order to satisfy the requirement of being an "object of general public utility" within the meaning of Section 2 (15) of the 1961 Act, it is not necessary that the benefit should reach each and every poor person in the state or the country. It is sufficient if it reaches a sizeable number of members of the public (Girijan Co-operative Corporation Ltd. Vs. CIT (1989) 178 ITR 359,364 (AP); in that case, the improvement in the conditions of the members of the Scheduled Tribes has been held to be an object of the general public utility.

The author would also like to bring to the knowledge of the readers some of the case laws which might come in useful for individuals organisations and in the process clarify some doubts.

Where depreciation has been debited in the account of the trust the same has to be deducted in computing the income of the trust (CIT Vs. Society of the Sisters of St. Anne, (1984) 146 ITR 28, (Karn). In CIT Vs. Raipur Pallottine Society (1989) 180 ITR 579 (MP) the Tribunal was held justified in directing the Income-Tax Officer to allow depreciation to the assessee,



a charitable trust, in respect of the depreciation of assets owned by it. When a charitable trust donates its income to another charitable trust, the provisions of section 11 (1) (a) can be said to have been met by the donor trust and the donor trust can be said to have applied its income for charitable and religious purposes (see CIT Vs. Trustees of the Jadi Trust, (1982) 133 ITR 494, 501 (Bom) CIT Vs. Sarladevi Sarabhai Trust (1988) 172 ITR 698, 708 (Guj).

Section 50 of the Indian Trusts Act provides that in the absence (i) of specific directions to the contrary contained in the deed of trust, or (ii) of a contract to the contrary entered into with the beneficiary or the court at the time of accepting the trust, a trustee has no right to remuneration for his/her services as trustee. The charitable or religious trusts are not governed strictly by the provisions of the Trusts Act but by a special Act, if any, passed by the state concerned. If there is no restriction in the specific law for the trustee to receive remuneration for rendering active services in managing the affairs and carrying out the objects of the trust, remuneration may lawfully be received by the trustee and such remuneration is allowable as a deduction in computing the income of the trust (CIT Vs. Lucknow Diocesan Trust Association (1980) 123 ITR 38 (A11), CIT Vs. Trustees of Dr. Divekar Charity Trust (1977) 110 ITR 227 (Bom), Aravindkumar J Saheba Vs. CIT (1981) 131 ITR 86 (G).

Similarly expenses for maintenance and repairs of the trust property, payment of salary to employees, taxes and other expenses which are incidental to and connected with the object of the charitable trust are allowable (Deo Radha Madhava Lalji Genda Trust Vs. Property-Tax Officer (1980) 125 ITR 531 (NP).

Further, Sections 11 (2) (a) and (b) prescribe the conditions to be observed for successful accumulation in excess of 25% of the trust income. One of the conditions is that such excess percentage is to be kept invested in specified securities and deposits. The 'manner' has been 'prescribed' in Rule 17 which refers to Form No. 10 as the form of notice. While the section or the rule does not prescribe any time limit formaking such investments, paragraph 2 of Form No.10 says that such investments are to be made before the expiry of a certain period from the end of the previous year. In Muthia Chettiar Family Trust Vs. ITR (1972) 86 ITR 282 (MAD) affirm ITO Vs. M.C.T. Trust (1976) 102 ITR 138 (Mad) and CIT Vs. Shree Padmanabhaswami Temple Trust (1979) 120 ITR 42 (Ker), it was held that the words "in the prescribed manner" in Section 11 (2) (a) do not confer power on the rule - making authority to prescribe a time limit. That portion of Form No.10 has been declared ultra vires (a1) see S.T.O. Vs. K.I. Abraham (1967) 20 STC 367 (SC), Solar Works Vs. E.S.I. Corporation (1964) 2 MLJ 223 (Mad), CIT Vs. Shri Krishen Chand Charitable Trust (1975) 98 ITR 387 (J & K), CIT Vs. S.R.M.C.T. Tirupoani Trust (1984) 150 ITR 642 (Mad). This is so because a form does not qualify as a statutory provision nor can it impose a time limit which the statute does not provide (CIT Vs. Trustees of Shri Teckchand Chandira Trust (1989) 80 CTR (Bom) 161, 162).

Condonation or delay in filing form No.10 - departmental circular. The following departmental circular No.273 dated June 3, 1980 elaborates the matter.

The following is the text of the order under section 119 (2) (b) dated June 3 1980 as referred to in circular No. 273 of date:-

In exercise of the powers conferred under section 119 (2) (b) of the Income-Tax Act, 1961 (43 of 1961) the Central Board of Direct Taxes hereby authorises the Commissioners of Income-Tax to admit applications under section 11 (2) read with rule 17 of the I.T. Rules 1962 from persons deriving income from property held under trust wholly for charitable or religious purposes for accumulation of such income to be applied for such purposes in India. When the aforementioned applications are filed beyond the time stipulated, the Commissioners of Income-Tax will, while entertaining such application, satisfy themselves that the following conditions are fulfilled:-

- a) that the genuineness of the trust is not in doubt.
- b) that the failure to give notice to the Income-Tax Officer under section 11 (2) of the Act and investment of the money in the prescribed securities was only due to oversight.
- c) that the trustees or the settler have not benefitted by such failure, directly or indirectly.
- d) that the trustees agree to deposit its funds in the prescribed securities prior to the issue of government sanction extending the time under section 11 (2).
- e) that the accumulation or setting apart of the income was necessary for carrying out the objects of the trust.

The effort here primarily has been to highlight some of the salient provisions and judicial pronouncements regarding the law relating to charity which may be found useful by the readers. It is hoped that the board circulars and other cases can be put to good use by the readers.



असाधारण EXTRAORDINARY

भाग II — खण्ड 3 — उप-खंड (i) PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

सं॰ 441] No. 441 I

नई दिल्ली, शुक्रवार, दिसम्बर 27, 1996/पौष 6; 1918 NEW DELHI, FRIDAY, DECEMBER 27, 1996/PAUSA 6, 1918

गृह मंत्रालय

अधिसूचना

नई दिल्ली, 27 दिसम्बर, 1996

सा. का. नि. 592(अ). — केन्द्रीय सरकार, विदेशी अभिदाय (विनियमन) अधिनियम, 1976 (1976 का 49) की धारा 30 द्वारा प्रदत्त शिक्तयों का प्रयोग करते हुए विदेशी अभिदाय (विनियमन) नियम, 1976 का और संशोधन करने के लिए निम्नलिखित नियम बनाती है, अर्थात् :—

- (1) इन नियमों का संक्षिप्त नाम विदेशी अभिदाय (विनियमन) संशोधन नियम, 1996 है।
 - (2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।
- विदेशी अभिदाय (विनियमन) नियम, 1976 (जिसे इसमें इसके पश्चात उक्त नियम कहा गया है) में, नियम 4 के खंड (क) में "साठ दिन" राब्दों के स्थान पर ''चार मास'' शब्द रखे जाएंगे।
- उक्त नियमों के नियम 8 के उपनियम (2) में "साठ दिन" शब्दों के स्थान पर "चार मास" शब्द रखे जाएंगे।
- प्ररूप वि. अ.-1क, वि. अ.-3 और वि. अ.-8 के स्थान पर निम्नलिखित प्ररूप रखे जाएंगे, अर्थात् :--

प्ररूप वि. अ.- 1क

[,नियम 3 (कक) देखिये]

संगम द्वारा या उनकी ओर से विदेशी अभिदाय स्वीकार करने के लिए केन्द्रीय सरकार की पूर्व अनुज्ञा प्राप्त करने के लिए आवेदन। [विदेशी अभिदाय (विनियमन) अधिनियम, 1976 की धारा 6 (1); धारा 6 (1क) और धंग 10 (ख) के परन्तुक]

तारीख.....

सेवा में.

सचिव,

भारत सरकार.

गृह मंत्रालय, नई दिल्ली।

विषय: विदेशी.अभिदाय (विनियमन) अधिनियम, 1976 के अधीन केन्द्रीय सरकार की पूर्व अनुज्ञा प्राप्त करने के लिए आवेदन। महोदय.

, इसमें आगे नामित संगम की ओर से विदेशी अभिदाय स्वीक़ार करने के लिए केन्द्रीय सरकार की पूर्व अनुज्ञा प्राप्त करने के लिए आवेदन करता हं।

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	(च)	संगम की कार्यपालक समिति/			**************************************	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	**********
		के सदस्यों के ब्यौरे	inti intiquality	• • • • • • • • • • • • • • • • • • • •	••••••••••		
				**********	•••••	•••••	•••••
क्रम सं.	नाम	पिता/पित का नाम	राप्ट्रिकता	उपजीविका	संगम में धारित	अन्य पदाधिकारियों	पता
					पद, यदि कोई हो।		
						यदि कोई हो।	
1	2	3	4	<u></u>	6	7	8
9		तिखत के अधीन चाही गई है :-		2> >	2 4 6		
(3		विदेशी अभिदाय (विनियमन) रजिस्ट्रीकृत नहीं है; या	आधानयम, 1976 क	न धारा 6(1क) क	अधान जसा कि उक्त	आधानयम के अधीन	काई सगम
(9		उक्त अधिनियम की धारा 6 (1) के प्रातक के अर्थ	नि केन्द्रीय स्थानम् व	ही राजपुत्र में एकाणित	विदेशी अधिदाम स्टीन	त करते के
((3)	उपत जापानपन का पात । (।	। या परिपुत्रा या अव	। जात्राच तत्वार व	व तजान न त्रमाहात	विदेशी जानदीय स्वाका	र कारन का

- लिए पूर्व अनुज्ञा प्राप्त करने के लिए संगम को निदेश देने वाली किसी अधिसूचना के आधार पर;
- उक्त अधिनियम की धारा 10 के अधीन केन्द्रीय सरकार के किसी आदेश के आधार पर जिसमें कोई विदेशी अभिदाय स्वीकार करने (刊) के लिए संगम मेंपूर्व अनुज्ञा प्राप्त करने की अपेक्षा की गई है।
- 4. क्या विदेशी अभिदाय (विनियमन) अधिनियम, 1976 के अधीन संगम ने कभी रिजस्ट्रीकरण के लिए आवेदन किया है ? यटि ऐसा है तो :
 - रजिस्ट्रीकरण के लिए आवेदन पत्र प्रस्तुत करने की तारीख; (事)
 - मंतालय से प्राप्त अंतिम संसूचना का संख्यांक और तारीख, यदि कोई है; (国)
 - क्या रजिस्ट्रीकरण नामंजूर किया गया था; या (刊)
 - क्या रजिस्ट्रीकरण के लिए आवेदन अभी भी लंबित है।
- 5. क्या संगम ऐसे प्रकाशन का स्वामी (मुद्रक/प्रकाशक) संपादक है, जो प्रैस और पुस्तक रजिस्ट्रीकरण अधिनियम, 1867 के अधीन एक रजिस्ट्रीकृत ''समाचार-पत्र'' है ?
- 6. (i) क्या संगम ने निम्नलिखित के अनुसार विदेशी अभिदाय प्राप्त किया है :-
 - (क) केन्द्रीय सरकार की पूर्व अनुज्ञा से, यदि ऐसा है तो अनुज्ञा सूचित करने वाले पत्र का संख्यांक और तारीख बताएं; या

(संगम का नाम और पूरा पता जिसके अन्तर्गत राज्य और पिन कोड भी है और यदि रिजस्ट्रोकृत सोसाइटी है तो उसका रिजस्ट्रोकरण संख्योंक और रजिस्ट्रीकरण का राज्य भी है), 31 मार्च को समान्त होने वाले वर्ष के लेखाओं की संपरीक्षा की है और सभी सुसंगत वाहियों और वाउचरों की जांच की तथा प्रमाणित किया जाता है कि वह संपरीक्षित लेखाओं के अनुसार है :-

- (i) --- वर्ष के आरंभ में अग्रनीत विदेशी अभिदाय-- र.-- पैसे धा। के दैरान (ii) कैलेण्डर वर्ष संगम ने -- रु.- का/के समतुल्यं विदेशी अभिदाय प्राप्त किया
- (iii) वर्ष--- को समाप्ति पर संगम के पास अनुपयोजित विदेशी अभिदाय का अतिशेप-- रु. था।
- (iv) प्रमाणित किया जाता है कि संगम के विदेशी अभिदायों के लेखा और उससे संबंधित अभिलेख विदेशी अभिदाय (विनियमन) नियम, 1976 के नियम 8(1) के साथ पठित विदेशों अभिदाय (विनियमन) अधिनियम 1976 की धारा 13 में विनिर्दिष्ट रीति में रखे गए हैं।
 - (v) ऊपर दी गई जानकारी और संलग्न तुलनपत्र और प्राप्ति और संदाय का विवरण मेरी /हमारी जांच के अनुसार सही है।

चार्टर्ड एकाउंटेट के हस्ताक्षर उसकी मुद्रा और पते सहित [फा. सं. 🛚 🗸 21022/10/(1)/96-एफ.सी.आर.ए.1] गुरचरण सिंह, संयुक्त सचिव

टिप्पणी :-मूल नियम अधिसूचना संख्या सा. का. नि. 755(अ), तारीख 5 अगस्त, 1976 [फा. सं. II 21022/5/76 एस एण्ड पी (डी आई)] द्वारा प्रकाशित किए गए थे । उनमें पश्चात्वर्ती संशोधन निम्न द्वारा किया गया है :—

का. आ. 860 (अ), तारीख 29 दिसम्बर, 1977 [फा. सं. II/21022/(2)4/77-एफ. सी. आर. ए-1], का. आ. 37(अ), तारीख 18 जनवरी, 1979 [फा. सं. II/21022/5(5)/78-एफ. सी. आर. ए-1], का. आ. 615 (अ), तारीख 27 जुलाई, 1981 [फा. सं. II/21022/10(2)/81—एफ. मी. आर. ए-1], सा. का. नि. 755 (अ), तारीख 5 नवम्बर, 1984 [फा. सं. II/21022/10(१)/84-एफ. सी. आर. ए-1] और सा. का. नि. 179(अ), तारीख 25 मार्च, 1991 [फा. सं. II/21022/10(2)/90-एफ. सी. आर. ए-1]

MINISTRY OF HOME AFFAIRS NOTIFICATION

New Delhi, the 27th December, 1996

G.S.R. 592(E).—In exercise of the powers conferred by section 30 of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976) the Central Government hereby make the following rules further to amend the Foreign Contribution (Regulation) Rules, 1976, namely:-

- 1. (1) These rules may be called the Foreign Contribution (Regulation) Amendment Rules, 1996.
 - (2) They shall come into force on the date of their publication in the Official Gazette.
- 2. In the Foreign Contribution (Regulation) Rules, 1976 (hereinafter referred to as the said Rules), in rule 4 clause (a) for the words "sixty days" the words "four months" shall be substituted.
 - 3. In sub-rule (2) of rule 8 of the said Rules for the words "sixtly days", the words "four months" shall be substituted.

4. For Forms FC-1A, FC-3 and FC-8 the following forms shall be substituted, namely :-

* FORM FC-1A (See Rule 3(aa))

Application for seeking prior permission of the Central Government for accepting foreign contribution by or on behalf of an association.

[Proviso to section 6(1); section 6(1A) and section 10(b) of the Foreign Contribution (Regulation) Act, 1976.]

No	*	************	Date	*********
To				
	Mini	Secretary to the Government of I stry of Home Affairs, DELHI.	ndia	
Subje	ct :	Application for seeking prior under the Foreign Contribution		mission of the Central Government gulation) Act, 1976.
Sir,				
	•	I,, on reby apply for seeking prior per of foreign contribution.	behi nissi	alf of the Association named here- ion of the Central Government for
1.	(a)	Particulars of the Association (Full name and postal address.)		
		<i>;</i>		PIN
				Telephone No
	(b)	Address of the Principal/Head Office of the Association	2	*********
				0 - 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
2.		Full particulars of the person applying on behalf of the Association:	:	
	(a)	Name in full)	:	**************************

Hivos

(b)	Father's/Husband	l's Name	3	0.0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	69011111	•		
(c)	Uccupation		1	* • • • • • • • • • • • • • • •	* * * * * * * * * * * * *	•		
(6)	Residential addr	ress.	;			•		
						••		
						••		
(e)	If an office-b held in the Ass	earer, the officeciation.	ce :	,		***		
(f)	Executive Commi		n ;					
S.No.	Mane	Name of f husband	ather	/ Nationality	Occupation	Office held in the association, if any.	Relationship with other office-bearers, if any.	Address
1.	2. •	3.		4.	5.	6.	7.	8.

- 3. Whether permission is sought
 - a) under Section 6(1A) of the Foreign Contribution (Regulation) Act, 1976 as an association not registered under the said Act; or

- b) by virtue of a notification of the Central Government under proviso to section 6(1) of the said Act, published in the official Bazette, directing the association to seek prior permission for acceptance of foreign contribution;
- c) by virtue of an order of the Central Government under Section 10 of the said Act requiring the association to seek prior permission for acceptance of any foreign contribution.
- 4. Whether the association ever applied for registration under Foreign Contribution (Regulation) Act, 1976, if so:
 - a) the date of submission of application for registration;
 - the number and date of last communication, if any, received from the Ministry;
 - c) whether registration was refused; or
 - d) whether application for registration is still pending.
- 5. Whether the association is owner/printer/publisher, editor of a publication which is a registered "newspaper" under the Press and Registration of Books Act, 1867.
- 6. (j) Whether the association ever received foreign contribution -
 - (a) with prior permission of the Central Government, if so, the number and date of letter conveying the permission; or
 - (b) without prior permission, of the Central Bovernment, if so, full particulars of foreign contribution received, address of the branch of the bank and account number in which such contribution was deposited.
- tion of foreign contribution received as per tal and/or it above was sent to the Central Severnment in the prescribed manner.

if so the date of subpression of the accounts.

- (iii) If the permission was granted in the current year, details of foreign contribution received and utilised purposewise, showing the unspent balance should be annexed.
- Details of activities, if any, during the past three years alongwith audited statement of accounts.
- 8. Nature and full details of foreign contribution including value to be received. Please attach:
 - (i) Purpose/programme for which foreign contribution is proposed to be received and utilised indicating also the geographical area(s) to be covered.
 - (ii) A copy of the proposal/project which has been approved by the foreign source for funding, including projected outlays.
 - (iii) A copy of the proposal/project which has been approved for funding out of the foreign contribution. (This column applies only to second or subsequent recipients).
 - Name of the Bank and address of the branch through which foreign contribution is proposed to be received.
- Specific Account Number in the said branch of the bank.
- 1:. Particulars of the foreign source or the source(s): from which foreign contribution is proposed to be received:-
 - (a) If an individual, his personal particulars including name, present address, permanent address, nationality, profession.

- (b) If an Organisation / Institution/Association/ Trust/Foundation /Trade Union etc., full particulars thereof including :-
 - (i) Full name and complete address
 - (ii) Address of Head Office/Principal Office
 - (iii) Aims and objects
 - (iv) Particulars of Chief Functionary and important office bearers
 - (v) Nature of connections/dealings with the foreign source or the funding source.
- (c) Whether the foreign source is a Government of a foreign country or agency thereof.
- 12. Any other information of significance which the applicant may like to furnish.

Yours faithfully,

(Name of the Chief Functionary or authorised office-bearer (with seal of the association))

Declaration

I hereby declare that the above particulars furnished by me are true and correct.

Place :

Date s

Signature of the applicant (Name of the Chief Functionary or authorised office-bearer (with seal of the association)) 8 If the foreign contribution, whether currency or article is to received from any person or association who has received the same as first, second or subsequent recipient, particulars of such person or association should be given against column 11 above.

Note:

No.

PIN Sode :

- 1. An incomplete application i.e. without necessary documents /details / explanations is likely to be rejected summarily.
- In case the space against any column is insufficient, separate annexure should be attached..
- Please use capital letters.
- 4. The application shall be signed by the Chief Functionary or authorised office-bearer of the association."

"Form FC-8 (See rule 3A)

Form of application for registration with the Central Government under Foreign Contribution (Regulation) Act, 1976 for acceptance of Foreign Contribution.

Date

To			
	The Secretar Ministry of New Delhi.		the Government of India, Affairs,
Sub:			or registration under the Foreign Contribution Act, 1976.
Sir,			
after	I., , hereby appl	ly fo	on behalf of the Association named hereafter, or registration of the Association named hereunder:
(i)	Name of	the	Association and its complete postal address:
	Hane	:	
	Address	:	
	Town/city	:	•••••
	District	*	State :

- (ii) If the Association is a registered Trust or society, its:-
 - (1) Registration No. 1
 - (2) Place of Registration:
 - (3) Date of Registration : (Certified copy of the Registration Certificate to be attached).
- (iii) (A) Nature of the Association :
 - (a) Religious (b) Cultural (c) Economic
 - (d) Educational (e) Social
 - (B) If a religious Association, state whether :-
 - (a) Hindu (b) Sikh (c) Muslim
 - (d) Christian (e) Buddhist (f) Others
- (iv) Whether the applicant association is a branch/ unit/associate of foreign based organisation OR another association already registered under Foreign Contribution (Regulation) Act, 1976;

If so, name and address of the parent organisation.

- (v) Whether the applicant association ever received foreign contribution without prior permission under the Foreign Contribution (Regulation) Act, 1976. If so, full particulars of foreign contribution received alongwith complete address of the bank branch and Bank Account Number in case of currency, and complete details of foreign contribution other than currency, received alongwith the accounts should be furnished.
- (vi) (a) Main aims and object(s) of the association (please enclose a copy of Memorandum of the Association and/or Article of Association, if applicable).
 - (b) Main object(s) and definite programme(s) for which foreign contribution is to be accepted/utilised.

(vii) Names and addresses of the Members of Executive Committee/Governing Council etc., including the Chief Functionary:

S. No.	Nane	Name of father/ husband	Mationality	Occupation	Office held in the association, if any.	Relationship with other office-bearers, if any.	Address	
1.	2.	3.	4.	5.	ь.	7.	8.	

2. Whether the Association is functioning as editor, owner, printer or publisher of a publication registered as "newspaper" under the Press and Registration of Books Act, 1867.

If so, the details thereof.

- 3. Whether the association ever applied for registration under FC(R) Act, 1976, if so
 - (a) the date of submission of application for registration
 - (b) the number and date of last communication, if any, received from the Ministry.
 - (c) whether registration was refused
 - (d) whether application for registration is still pending.

Details of activities during the past three years alongwith copies of audited statement of accounts.

- 5. Details of area(s) of operation.
- 6. Mhether the association has been specified as an organisation of a political nature, not being a political party under Section 5 of the Foreign Contribution (Regulation) Act, 1976.
 - If so, the details of the notification.
- 7. (i) Name and address of the branch of the bank through which foreign contribution shall be received.
 - (ii) Bank account number of the association in the said branch of the bank for receipt and utilisation of foreign contribution is_____

Yours faithfully,

(Chief Functionary).

for and on behalf of the Association
(Name of the Association)

Declaration and undertaking

The association named hereinabove affirms that the information furnished above is correct and undertakes:-

- (i) to inform the Central Government (Ministry of Home Affairs) within thirty days if any change takes place in regard to the name of the association, its address, its registration, its nature, its aims and objects with documentary evidence effecting the change;
- to obtain prior permission for change of office-bearer(s) if at any point of time such change causes replacement of 50% or more of the office-bearers as were mentioned in the application for registration under F.C.(R) Act, 1976 and undertakes further not to accept any foreign contribution, except with prior permission, till the permission to replace the office-bearer(s) has been granted;
- (iii) not to change the bank or branch of the bank without prior permission of the [entral Government. The reasons for change of bank or branch of the bank shall have to be relevant and justifiable; and
- (iv) not to accept any foreign contribution, unless it has obtained either the registration number, as applied for hereinabove, or prior permission of the Central Government under section 6(1A) of the Foreign Contribution (Regulation) Act, 1976.

(Chief Functionary)
for and on behalf of the Association
(Name of the Association) *

Note	1	(i)	The receipt of application for registration is not a commitment for grant of registration by the Central Government;	1
------	---	-----	--	---

- (ii) An incomplete application i.e without required documents/details/explanations is likely to be rejected summarily;
- (iii) In case the space against any column is insufficient separate sheets should be attached; and
- (iv) Please use capital letters.

* FORM FC-3
(See rule 4(a))

- 1. Association's details
 - (i) Name and address (in capital letters)
 - (ii) Registration No. & Date
 [under FC(R) Act, 1976]
 - (iii) Prior Permission No. & Date, if not registered
 - (iv) Nature of association : Cultural Economic Educational Religious Social
 - (v) Denomination in case of religious associations
- : (a) Hindu (b) Sikh (c) Muslim (d) Christian (e) Buddhist
 - (f) Others

2. Purpose for which foreign contribution has been received and utilised:

(In Rupees) Balance Utilised Receipt during the year Previous Purpose Balance As second/ Total As 1st subsequent Recipient recipient. In In In In kind kind cash (value) (value) 9. 8. 7.

- ii) Construction and extension of places of worship.
- iii) Publication of religious literature.

Maintenance and repair of places of worship.

- iv) Education of Preachers/ Priests.
- v) Religious functions.
- vi) Care of orphans.
- viil Help for poor, aged and destitute.
- viti) Health and family welfare
- ix) Relief for natural calamity
- x) Construction/extension of School/ College buildings.
- xi) Repair/maintenance of school/college buildings.
- mii) Construction/extension of other buildings.
- siii) Repair/maintenance of other buildings.
- xiv) Research
- xv) Stipend/scholarships
- xvi) Agricultural activities.
- xvii) Animal Husbandry.
- xviii) Rural Development
- xix) Sanitation.
- ax) Housing
- xxi) Environment
- exii) Cultural programmes
- xxiii) Theatre/Films.
- xxiv) Maintenance of places of Historic and Cultural importance.
- Any other purpose with details.

ERAND TOTAL :

3.	Name & address of t.e designated Bank with Account Mumber.	1			
4.	Donorwise Receipts	:			
	i) Institutional donors	, (ii)	Name(s) and Address(es)	Asount	Purpose(s)
	/ii) Individual donors above Rs. 1.00 lakh	(i) (ii)	Name and Address	Asourt	rurpose(s)
	iii) Withers	i (i) (ii)		Amount:	
5.	Countrywise receipts	1	Name of the countries (i) (ii) (ii) (iii)	Anount	
			TOTAL:		
			Declaration		

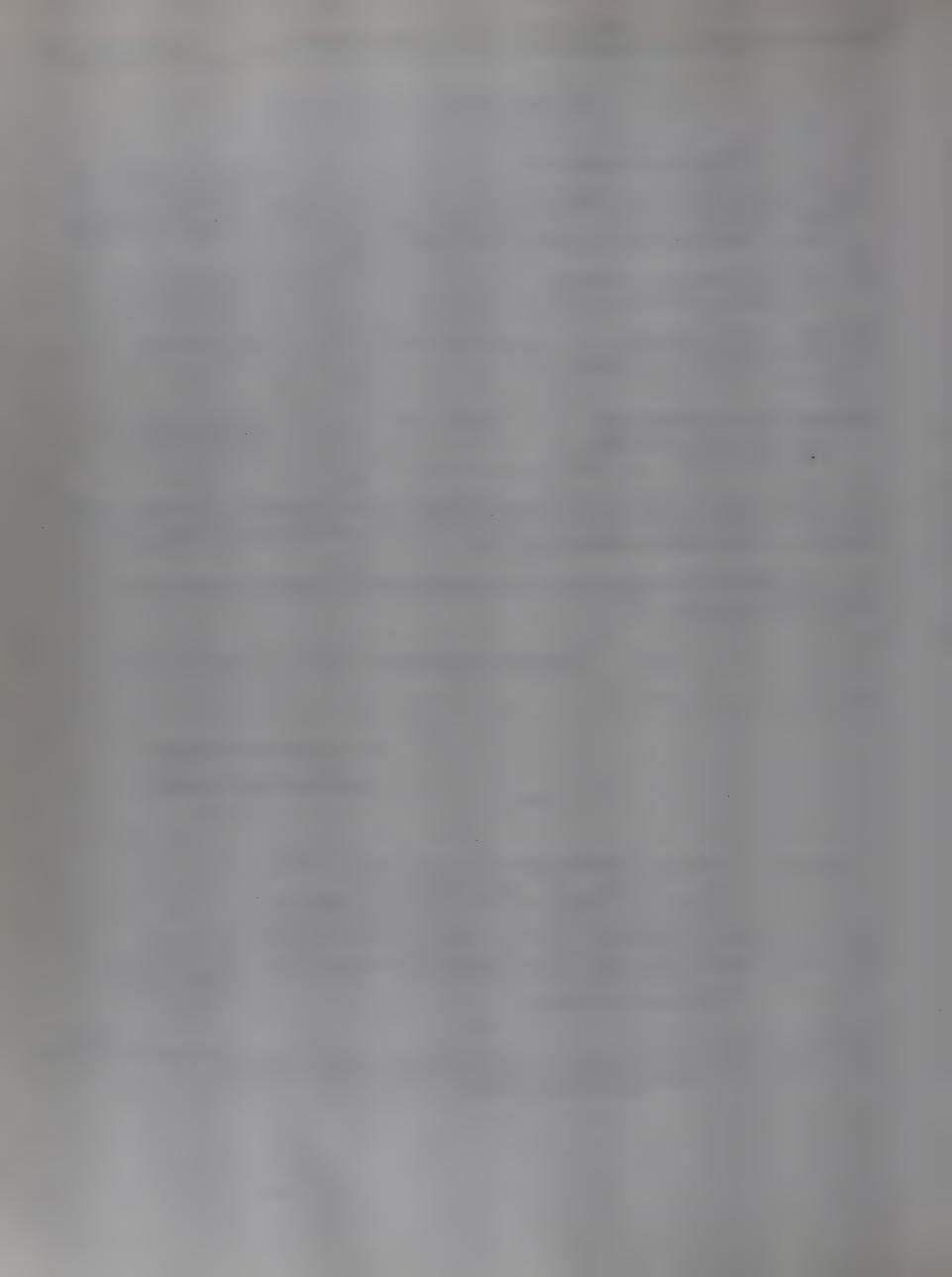
I hereby declare that the above particulars furnished by me are true and correct. I also affirm that the foreign contribution has been utilised for the purpose for which the association has been registered/prior permission obtained.

Place : Date : Signature of the Chief Functionary (Name of the Chief Functionary and Seal of the association)

Certificate to be given by Chartered Accountant

	I / We have audited the accounts of
	ssociation and its full address including State and Pin code, if registered society, its registration and State of registration), for the year ending 31st March, and examined all relevant vouchers and certify that according to the audited accounts:
(i) the tat the	ought forward foreign contribution beginning of the year was Rs.
Was re	contribution of / worth Rs. rived by the Association during
contr	lance of unutilised foreign bution with the association end of the year was Rs.
thereto in	fied that the Association has maintained the accounts of foreign contribution and records relating the manner specified in section 13 of the Foreign Contribution (Regulation) Act, 1976 read—with rule preign Contribution (Regulation) Rules, 1976.
(v) The	information furnished above and in the enclosed Balance Sheet and Statement of Receipt and Payment is ecked by me / us.
	Signature of Chartered Accountant with seal and address
	[F. No. II/21022/10(1)/96-FCRA. I]
	GURCHARAN SINGH, Jt. Secy.

Foot-note : The principal Rules were published vide notification 6.S.R. 755(E), dated the 5th August, 1976 (F.No.II/21022/5/76-S&P(D-I) and subsequently amended vide S.O. 860(E), dated 29th December, 1977 (F.Mo.11/21022/4(2)/77-FCRA-1), S.D.. 37(E), dated the 18th January, 1979 F. No. 11/21022/5(5)/78- FCRA-I), S.O. 615(E), dated 27th July, 1981 (F.No.II/21022/10(2)/81-FCRA-I), 6.S.R.755(E), 5th November ,1984 (F.No.11/21022/10(9)/84-FCRA-I) and G.S.R. 179 (E), dated the 25th March, 1991 (F. No. 11/21022/10(2)/90-FCRA-I).



List of Contributors

- 1. Anil Charnalia is a Chartered Accountant Consultant and works in Non Governmental Sector and the Private Sector.
- 2. M. Anand Kumar is a Chartered Accountant. He works with Non-Governmental Organizations and also in the private sector in Hyderabad
- 3. K. Shiva Kumar is a Chartered Accountant Consultant. He is auditor of several Non Governmental Organizations. He is at Gandhi Gram.
- 4. Ajit Mani is the Managing Director of Intervention (India) Pvt. Ltd., Bangalore.
- 5. M.K. Narasimha Rao is a Cost Accountant based in Bangalore. He was earlier Financial Controller at Action Aid. He has worked with Non-Governmental Organizations for a number of years.
- 6. T. Ramesh from Hyderabad is a Chartered Accountant Consultant and has worked with the Voluntary Sector for a long period.
- 7. Latika Salgoankar is a lawyer and is Co-ordinator of an organization called Nari Samata Manch at Pune.
- 8. Sangeetha is a Chartered Accountant. She is the Financial Controller of Hivos, India Regional Office.
- 9. Vivek Warrior graduated from Indian Institute of Management (IIM), Bangalore. He is Director of Intervention (India) Pvt. Ltd., Bangalore and Managing Director of Alliance Info Systems Pvt Ltd., Bangalore.

Hivos Regional Office Bangalore: list of available Hivos publications

- 1. Hivos Regional Office Annual Report 1992, 1993, 1994, 1995.
- 2. Technical Report Series 1.1, AIDS: Impact and Intervention, Editors: Rajendra Nathan, Joy D'Souza and Shobha Raghuram, 1992.
- 3. Technical Report Series 1.2, Development Policies: Issues and Challenges for the '90's, Editor: Shobha Raghuram, 1992.
- 4. A Reference Manual Management and Accounting Systems in the Voluntary Sector, Editor: Sangeetha, 1992.
- 5. Technical Report Series 1.3, Future of the Co-operatives in India, Editor: Reena Fernandes, 1993.
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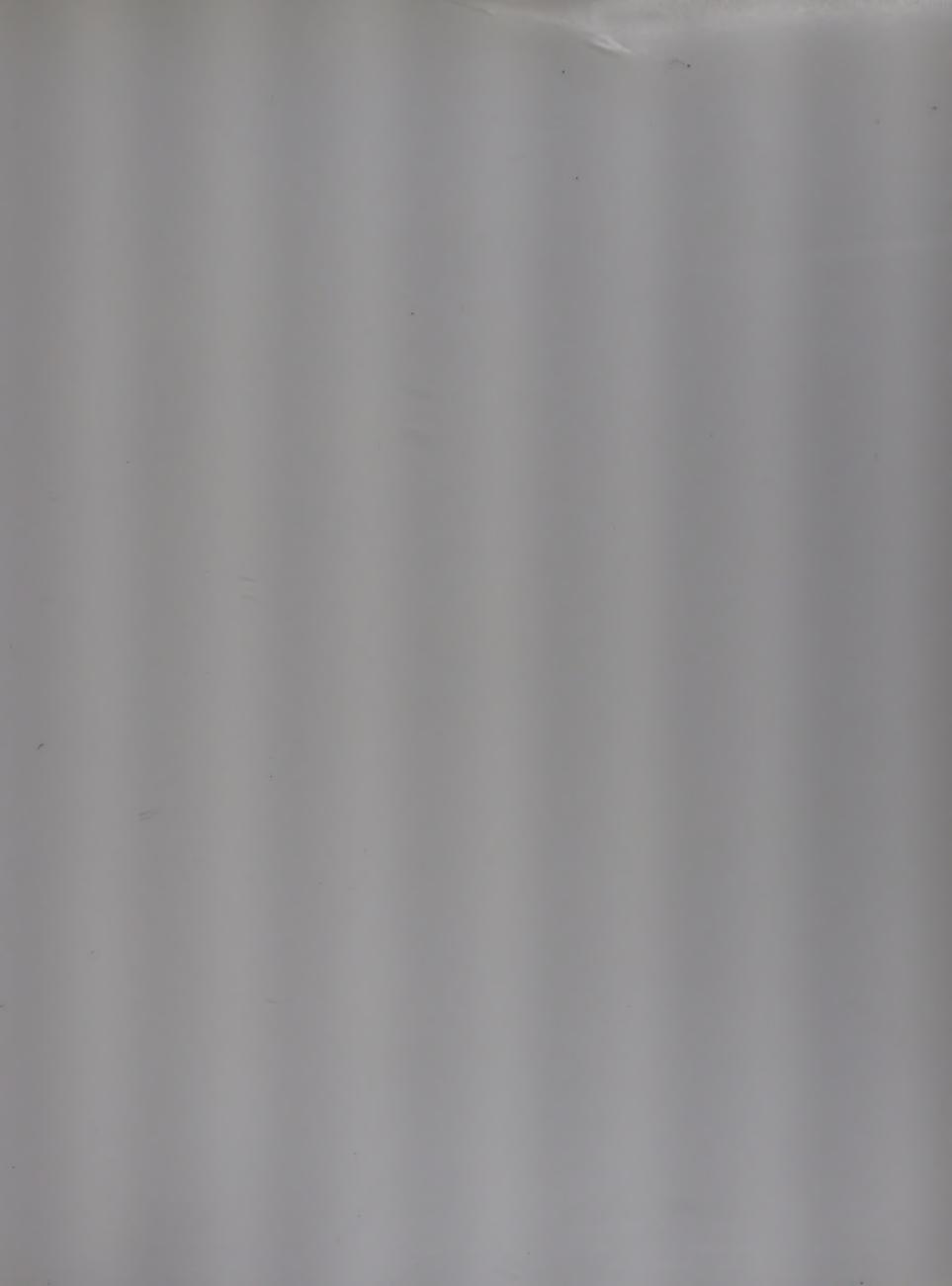
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These publications are for internal circulation.

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ABOUT THE BOOK

Non-Government Organisations/Private Voluntary Organisations have a special place in our society. They are promoted with several socio-political ideals often with insufficient attention to legal and accounting requirements in institution building. This is a litigious area and it is crucial that good management practices be cultivated for long-term sustainability.

With a view to bringing out some of these issues into an open discussion and arriving at some positive guidelines for action, several qualified accounting and management experts and representatives of NGOs came together. This book tries to capture the essence of their deliberation. It is hoped that the publication will be some assistance to all those who are interested in the growth and development of the voluntary movement.



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